

February 3, 2009



TRANSCRIPT

February 3, 2009

MONTGOMERY COUNTY COUNCIL

PRESENT

Council President Phil Andrews

Council Vice President Roger Berliner

Councilmember Michael Knapp

Councilmember Valerie Ervin

Councilmember George Leventhal

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember Duchy Trachtenberg



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

Good morning, everybody, and welcome to a meeting of the County Council. Thank you for your patience. We are going to begin with a moment of silence for our late colleague, Don Praisner, and I would ask you to especially keep his family and his wonderful staff in your prayers and thoughts. Thank you. We are now going to have a presentation to the Quince Orchard High School Marching Band, and I'm going to make the presentation on behalf of the Council. And so I will ask the members of the band to join me up at the front, which--this will be the toughest part of your season. And also the band director, Phil Proctor, and the assistant principal at Quince Orchard High School, Ronnie Heller. And yes, we're doing great. You know how to line up. That's great. That's a good thing about being a marching band, right? And I think we have most of the band here this morning. I think there are 73 members in the band, roughly, and it looks like we've got a great majority of them here, which is great. So we made need to make three rows here, so just squeeze in. This is one of the real pleasures of serving on the County Council, is getting to recognize the outstanding accomplishments of our young people in the county, and I've had the opportunity to recognize a lot of great accomplishments over the 10 years I've served on the Council, and a number of them have involved Quince Orchard High School, which has had a string of successes in the last few years, including on the playing fields, as well, with several championship sports teams. And now we have the marching band recognized as the best in its category in the state, and it's a real pleasure --I've had the chance to hear them because I play tennis regularly at Quince Orchard High School, and they practice, from August through December, I understand, usually in the parking lot, or at least partly lining up in the parking lot, so I've gotten to hear them, and I hear them at night, as well, because the sound carries really well...from the football field. And it's a pleasant sound, so no complaints. But I want to give a proclamation on behalf of the County Council which says, "Whereas the Quince Orchard High School 73-member marching band made its victorious performance, beating five other bands at the Maryland State Marching Band Championship at Century High School in Sykesville on October 18th, and whereas the band won the U.S. Scholastic Band Association Group IV Open Division Title with a score of 87.5--the second-highest score among 19 bands overall performing at the competition-- and whereas the Marching Cougars also won Best Color Guard, Best Music, and Best Effect awards for its Jekyll and Hyde show based on three selections from the Broadway musical, and whereas the Marching Cougars, led by Band Director Philip Proctor and Color Guard Director Liz Neimeier--Niemic, I'm sorry --have been performing competitively since 1995, and whereas the U.S. Scholastic Band Association is committed to the services of band students, directors, parents, and fans across the country, in marching and other ensemble programs, now therefore be it resolved that the Montgomery County Council congratulates the Quince Orchard Marching Band, and be it further resolved that the Montgomery County Council joins with the entire Quince Orchard High School community in recognizing this wonderful achievement in bringing home the championship to Montgomery County." And it's signed this day by myself, Phil Andrews, Council President. I want to give it on behalf of the Council. Congratulations.



February 3, 2009

PHILLIP PROCTOR:

On behalf of my students, I would like to thank Councilmember Andrews and the entire County Council for taking time out of their schedule today to recognize the hard-working students of our marching band at Quince Orchard High School. Today--with me here today is my assistant director, Liz Niemiec, and also our assistant principal at Quince Orchard High School, Miss Ronnie Heller, without whom-- the school administration--we could not be successful. So we are very pleased and honored to have this honor here today. Before we leave today--they don't know I'm going to do this, but we're going to--we didn't bring any instruments, and we thank the County Council for not passing any county ordinances about noise around Quince Orchard High School.

COUNCIL PRESIDENT ANDREWS:

You make beautiful music.

PHILLIP PROCTOR:

But we we're going to--have a fight song that we close every --Listen to them. They're so excited! We have a fight song that we close every single rehearsal and every single event that we have that we--we're going to--It's not really singing, because we're a band. It's more like shouting, but we'd like to leave you with that, if that's OK.

COUNCIL PRESIDENT ANDREWS:

Please do.

PHILLIP PROCTOR:

We'll start with--right with the chorus, so no introduction, so right on "The Cougars," all right? I'll go--and 1, 2, go. MARCHING BAND:

The Cougars will fight for victory. Our spirit is rising high. With red, black, and white, we'll win the fight. We're the Cougars of Quince Orchard High. We'll gladly show our strength and pride to overcome our foes. With red, black, and white, we'll win the fight. We're the Cougars of Quince Orchard High.

UNKNOWN SPEAKER:

Whoo!

COUNCIL PRESIDENT ANDREWS:

Would you like to--No? OK. All right. Now, the tough part is getting everybody in the picture, and I'm seeing everybody, so now we need the folks that are not as tall to move to the front. The folks that are taller, move to the back.

PHOTOGRAPHER:

I want to be able to see everybody.



February 3, 2009

1
2 COUNCIL PRESIDENT ANDREWS:

3 All right. Try to move in a little bit.

4
5 NEIL GREENBERGER

6 Mr. Proctor?

7
8 PHILLIP PROCTOR:

9 Yeah?

10
11 NEIL GREENBERGER:

12 Could you stay in front?

13
14 PHILLIP PROCTOR:

15 OK.

16
17 NEIL GREENBERGER:

18 So we're going to still have to move around.

19
20 COUNCIL PRESIDENT ANDREWS:

21 Move around to the front a little bit. OK.

22
23 PHOTOGRAPHER:

24 I want to be able to see everybody. In addition to me, there will be a number of other
25 people taking pictures, but let me make sure I can see all your faces. Um...girl in back, I
26 cannot see a couple of people behind Mr. Proctor, so you're going to have to move or
27 come up front. Girl in the yellow sweatshirt, come on up.

28
29 UNKNOWN SPEAKER:

30 Yeah. There you go.

31
32 COUNCIL VICE PRESIDENT BERLINER:

33 I guess we still have a lot of people here.

34
35 COUNCIL PRESIDENT ANDREWS:

36 You're right. We do. OK. All right. Thank you, everybody. And we're now going to have a
37 short tribute, the first of two tributes over the next couple of weeks to our late colleague,
38 Don Praisner, whose life we're going to celebrate and whose passing we're going to
39 mourn. We have an empty chair up here, and we will have an empty chair up here for
40 some time. And we want to especially keep in our thoughts his loving family and his
41 wonderful staff, who have gone through a great deal in the last year. And--so next week
42 will be the time in which we will have a formal tribute, and we will have a formal program.
43 The County Executive will be joining us next week to memorialize our colleague, and we



February 3, 2009

1 will have the opportunity for all Councilmembers to participate in that. I'm just making
2 some brief comments as I introduce what will be a short video tribute that was put
3 together yesterday by Susan Kennedy in tribute to our colleague. And we all miss him,
4 and we know that District 4 has gone through a lot. Everyone here will keep an eye out for
5 the people of District 4 in the period in which we have no Councilmember from District 4,
6 as we did last year when our late colleague Marilyn Praisner passed away, and we will--
7 we will press on and continue to do the public's business, but we will greatly miss Don
8 Praisner, and we are very thankful for all the contributions he made during his many years
9 of community service to the people of this county. There are a number of arrangements
10 that have been made, and I will announce them, and then we will have the video tribute.
11 There is going to be a viewing this afternoon from 2:00 to 4:00 and from 6:00 to 8:00 at
12 the Hines-Rinaldi Funeral Home at 11800 New Hampshire Avenue in Silver Spring, and
13 there is a mass that is open to the public which will be offered at 10 AM tomorrow at St.
14 John the Baptist Catholic Church at 12319 New Hampshire Avenue in Silver Spring. The
15 family has requested that in lieu of flowers, donations be made to the Marilyn and Donald
16 Praisner Scholarship at Montgomery College, care of Miss Nell Kane, 900 Hungerford
17 Drive, Suite 200, Rockville, 20850, or The First Tee of Montgomery County, the Donald E.
18 Praisner Fund, P.O. Box 18, Kensington, Maryland, 20895. And those were causes that
19 Don Praisner was very active in and did a lot to promote, and I hope that people will
20 respond to that, too. With that, I'm going to ask the folks who have put the video tribute
21 together to go ahead and start that now. I think it may take a few seconds from the time I
22 say that to the time we get it up there, but--there we go.

23
24 NARRATOR:

25 Don Praisner served on the Montgomery County Council just seven short months after
26 winning a special election to fill the vacancy left by the sudden death of his wife Marilyn.
27 Sadly, almost a year to the day, he passed away following surgery for colon cancer.
28 Councilmember Praisner represented District 4 in the eastern part of the county, where he
29 lived for most of his life. After graduating from Blair High School, he attended the first
30 class of Montgomery College and graduated from the University of Maryland. He worked
31 at the CIA for 30 years as an analyst, manager, and recruiter. It's there's he met his future
32 wife Marilyn, who served on the County Council for 17 years. After she died following
33 heart surgery last year, Mr. Praisner reluctantly ran for her seat at the urging of friends
34 and colleagues.

35
36 COUNCILMEMBER PRAISNER:

37 When my wife passed away, we looked for someone to take her place, and we
38 approached a number of former officials, and no one indicated a desire to run for the
39 office. And I got a phone call from Ike Leggett, our County Executive, and he said, "How
40 about you, Don?" And I said, "Don't ask me, Ike." But, uh...we finally decided that there
41 was no one running on the Democratic side that we thought was electable and who had
42 the type of interests that my wife had, and that--I shared a lot of her interests, a lot of her



February 3, 2009

1 concerns, and reluctantly, I said, "OK, I'll run," and went to the campaign and was
2 fortunate enough to win the primary, and then the voters elected me to the office.

3
4 NARRATOR:

5 Mr. Praisner was known for his quiet, unassuming demeanor. Councilmembers who
6 worked closely with him say he always remained steadfast in his dedication as a public
7 servant.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Well, Don was a quiet but strong voice for his constituents and for people who were
11 disadvantaged. He had a passion for people who need attention because they're--they
12 have disabilities. He was the former president of CSI, which works with people with severe
13 disabilities. He looked out very carefully for his constituents, as did Marilyn Praisner, and
14 he was a strong voice for fiscal responsibility and felt that government needed to be clear
15 about what it did and look out for those who couldn't help themselves.

16
17 COUNCILMEMBER ELRICH:

18 I really enjoyed working with Don. He was very levelheaded. He was very analytical. He
19 didn't talk to hear the sound of his own voice. If he had something to say, he said it, and
20 he said it succinctly, and I found it a very easy to work with him.

21
22 COUNCILMEMBER TRACHTENBERG:

23 Very much driven by common sense, a real sense of purpose around family and
24 community. And those were really things--the attributes that were very true of Marilyn, as
25 well. So I think you could certainly say they were a duo, and he was probably the perfect
26 person to come here to try to extend her work and preserve her legacy. He was hard-
27 working. He brought a certain level of candor to most conversations and certainly always
28 humor as well, and that's something, sitting right next to him, I saw firsthand. And believe
29 me, there were times when that was really a very important ingredient.

30
31 NARRATOR:

32 Councilmember Praisner was also an active member of his community before coming to
33 the Council. He served as Vice President of the Calverton Citizens Association, as well as
34 a Democratic precinct chair. He was passionate about golf and served on the board of
35 The First Tee of Montgomery County, an organization that introduces children to golf at an
36 early age. He came out of retirement to join the County Council and served on the Public
37 Safety and Management and Fiscal Policy committees. He chose his words carefully, and
38 his colleagues say his sense of humor kept them grounded.

39
40 COUNCILMEMBER ELRICH:

41 I really like this blue paisley shirt I have, and I wore it one day, and he told me he would
42 not sit next to me again if I wore that shirt--that it was too painful on his eyes. And he



February 3, 2009

1 would make little comments, side comments, about our discussions sometimes that
2 indicated his amusement at some of what goes on up on the dais.

3
4 NARRATOR:

5 Mr. Praisner had made it clear he was here to finish out his wife's term and would not
6 seek reelection. He was asked recently about how he would like to be remembered after
7 he left office.

8
9 COUNCILMEMBER PRAISNER:

10 I'd like to have people say, "He did a good job." I worry about my grandchildren, what they
11 can expect out of life, and I guess I'm somewhat of a pessimist in that regard in that I don't
12 see life getting better--if anything, just more trials and tribulations. Jobs are being more
13 difficult. You've got to be better educated. Housing is-- you know, where are they going to
14 live? How are they going to get around? I'd like to believe they'll have the same
15 opportunities I had to not only see Montgomery County but go out and see what the rest
16 of the world looks like. But in terms of legacy, just that I did the best I could.

17
18 COUNCILMEMBER TRACHTENBERG:

19 Marilyn and Don were really driven by family values and with the understanding that
20 community is really preserved and improved upon when there's a strong relationship
21 between community and local government. And in other words, they saw the significant
22 role that public servants can really play in the lives of everyday citizens. And Marilyn
23 spoke to that, and Don did as well, and I think if there's one thing that we're all missing
24 besides that wild sense of humor, it's exactly that core principle--that he really did
25 understand that what we're doing is really to improve the lives of everyone that lives here
26 and works here and plays here in Montgomery County.

27
28 NARRATOR:

29 The loss of Don Praisner now leaves even bigger shoes to fill in District 4. But there is no
30 question the Praisner legacy will live on in Montgomery County for many years to come.

31
32 COUNCIL PRESIDENT ANDREWS:

33 OK. Thank you to all of those who worked on that very touching tribute to Don. And it was
34 well done, and done very quickly. As we move forward, we will do a couple of things to
35 adjust to the fact that we do not have Don here. The most immediate change is that, as
36 we did last year when Marilyn Praisner died, we're going to have the officers of the
37 Council fill in on the vacant slots on the committees that Don served on. So Council Vice
38 President Roger Berliner is going to serve in the interim period on the Public Safety
39 Committee, and I'm going to serve in the interim period on the Management and Fiscal
40 Policy Committee. In terms of bringing a new person on from District 4, the law calls for a
41 special election, and the Council, I expect, will decide within the next couple of weeks
42 about a date for those elections, but I anticipate it will be similar to what we had last year,
43 which was an April and May timeframe, so...with that, we will come together next week to



February 3, 2009

1 have a more formal tribute to Don's life. We will be joined by the County Executive and
2 Don's family, and I know his staff are going through a very tough time, so to them
3 especially, we appreciate the amazing work that you have done. We know this is an
4 extremely hard time for you, and we're all here to help you get through it, as well. So thank
5 you for your amazing dedication to the people of District 4, as they continue to need you in
6 this interim period. Thank you all. With that, we're going to go to our general business, and
7 we have announcements, I think, and some calendar changes. Linda Lauer.

8
9 LINDA LAUER:

10 Good morning. First of all, today's agenda--on the consent calendar E, there's a change.
11 The committees--the Joint Public Safety T & E needs to continue a little further work on it,
12 so therefore, the Item E is changed to resolution to extend time for action on Executive
13 Reg 2908, Fire Safety Code. So that'll be extended until June 30. We've added this
14 afternoon a discussion of economic indicators. And then at the 3:00 closed session, that's
15 been deferred. We'll reschedule it for next week.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Thank you very much. So yeah, the closed session is deferred till a later date. Be
19 rescheduled shortly.

20
21 LINDA LAUER:

22 Right. The--also wanted to announce that the HHS Committee Meeting on Thursday has
23 been canceled. Yesterday's Ed Committee has been rescheduled for next Monday at
24 9:30. And we did receive one petition this week and that is from residents of North
25 Woodside neighborhood, supporting the closure of Talbot Avenue bridges to vehicles.
26 Thank you.

27
28 COUNCIL PRESIDENT ANDREWS:

29 Thank you very much. All right. If we have action--approval of minutes and Legislative
30 Journal from January 13 and January 15, 2009. Is there a motion for approval?

31
32 COUNCIL VICE PRESIDENT BERLINER:

33 So moved.

34
35 COUNCILMEMBER LEVENTHAL:

36 Second.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Moved by Council Vice President Berliner. Seconded by Councilmember Leventhal. All
40 those in favor of approval of those minutes and Legislative Journal, please raise your
41 hand. That is unanimous among all present. That's Councilmember Elrich,
42 Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President



February 3, 2009

1 Berliner, Councilmember Knapp, Councilmember Ervin, and Councilmember Leventhal.
2 All right. The Consent Calendar is now before us. Is there a motion for approval?

3
4 COUNCILMEMBER KNAPP:
5 So moved.

6
7 COUNCILMEMBER ERVIN:
8 Second.

9
10 COUNCIL PRESIDENT ANDREWS:

11 Moved by Councilmember Knapp. Seconded by Councilmember Ervin. Are there any
12 comments on the consent calendar? We have, for those listening, the receipt and release
13 of the Office of Legislative Oversight, Department of Economic Development--A Review of
14 Budget and Strategies, introduction of budget amendment for the Maryland-National
15 Capital Park and Planning Commission's FY09 operating budget, introduction on the
16 resolution to approve a franchise agreement for use of public right-of-way--XO
17 Communications Systems, introduction of a supplemental appropriation--Montgomery
18 College's FY09 College-- Capital Budget and amendment to the Capital Improvements
19 Program for the Goldenrod Building renovation, action on-- extending the time for action
20 on Executive Regulation on the Fire Safety Code, action on resolution to extend time for
21 Council action on Executive Regulation, Discharge of Guns, action--confirmation of
22 County Executive appointments to the Commission on Veterans' Affairs --Henry Richard
23 Fales, Susan Kirk, Jacqueline Hunt Ogg, J. Mauri Hamilton, and Richard Schiffauer. And I
24 don't see any comments, so I'll just say that we once again have a very thorough report
25 from the Office of Legislative Oversight on important issues before the county. This review
26 of the Department of Economic Development's Budget and Strategies--I know the Fed
27 committee will be working on that, and they have a work session tentatively scheduled for
28 February 9th on that, which is next Monday. So, seeing no comments, all those in favor of
29 the Consent Calendar, please raise your hand. That is unanimous among all eight
30 Councilmembers here. OK. Next we have action on the appointment of a member and the
31 chair of the Board of Appeals. And I will turn to my colleagues to see if there is a motion
32 for the appointment of a member to the board. We will begin with that, and then we'll do
33 the chair second, so...OK? Councilmember Floreen, and then Councilmember Ervin.

34
35 COUNCILMEMBER FLOREEN:

36 Thank you, Mr. President. As usual, we were presented with a tremendous range of
37 candidates, and I enjoyed meeting with the ones we interviewed. All of them are
38 tremendously impressive. Given the economic times we're facing, though, I think it would
39 be appropriate for us at this point to appoint someone with some business experience to
40 the board, so I'd like to nominate Michael Finnegan.

41
42 COUNCIL PRESIDENT ANDREWS:



February 3, 2009

1 Very good. OK. Are there any other nominations? Councilmember Ervin and then
2 Councilmember Praisner--uh, I'm sorry, Elrich--has his light on.

3
4 COUNCILMEMBER ERVIN:

5 Thank you, Mr. President. It's my pleasure to nominate Stan Boyd to serve on the Board
6 of Appeals. As a resident of Montgomery County for 40 years and a resident of Silver
7 Spring, Stan brings a wealth of knowledge to this position. As a retired teacher, he is used
8 to paying attention to the details and working with others for positive results, and one of
9 the things that impressed me the most about Stan is his commitment to the community
10 and his work on social justice issues. I know that Stan will be a fair and balanced member
11 of the Board of Appeals. I move his name.

12
13 COUNCIL PRESIDENT ANDREWS:

14 Thank you, Councilmember Ervin. Councilmember Elrich.

15
16 COUNCILMEMBER ELRICH:

17 I was going to move that, so I'll second that.

18
19 COUNCIL PRESIDENT ANDREWS:

20 OK. All right. Are there any other nominations from colleagues? Seeing none, the
21 nominations are closed, and we'll first have a vote on the nomination. Would you care to
22 make any other comments, Councilmember Floreen?

23
24 COUNCILMEMBER FLOREEN:

25 No. No.

26
27 COUNCIL PRESIDENT ANDREWS:

28 OK. All right. OK. OK. All those Councilmembers in favor of the nomination of Mr. Michael
29 Finnegan to fill the vacant position on the Board of Appeals, please raise your hand. OK.
30 That is Councilmember Floreen, Councilmember Vice President Berliner, Councilmember
31 Knapp. All those in favor of the nomination of Stan Boyd to fill the vacant position, please
32 raise your hand. That is Councilmember Elrich, Councilmember Trachtenberg, myself,
33 Councilmember Ervin, and Councilmember Leventhal. And so--

34
35 COUNCILMEMBER FLOREEN:

36 Mr. President, I'd like to move that we make that unanimous.

37
38 COUNCIL PRESIDENT ANDREWS:

39 OK. Second. Very good. We will make that unanimous of the eight members here, and so
40 Mr. Stan Boyd is appointed to the Board of Appeals. Congratulations, Mr. Boyd. We look
41 forward to working with you in your new role, and we know that you will bring a lot of
42 dedication to it, as you've demonstrated in the interview that we had, and as
43 Councilmember Floreen said, we always have a tough choice with appointments to



February 3, 2009

boards and commissions here because we have an excess of talented people in Montgomery County--not too many, but we have a number that always give us a tough choice to make, and this was no exception. So we appreciate the willingness of our community members to serve on these important commissions and boards. Now we will turn to the position of chair of the Board of Appeals. Is there a nomination for chair? Councilmember Leventhal.

COUNCILMEMBER LEVENTHAL:

Yeah. I'm going to nominate Donna Baron. She's served on the Board of Appeals--I'm sorry, I didn't pull her information-- for quite some years. She's very experienced, and it will indicate our willingness to consider talent regardless of party registration. She's, I think, the most qualified.

COUNCIL PRESIDENT ANDREWS:

Catherine Titus, you mean?

COUNCILMEMBER LEVENTHAL:

Catherine Titus.

UNKNOWN SPEAKER:

????? OK! I was wondering.

COUNCILMEMBER LEVENTHAL:

Catherine Titus is who I'm nominating. I do apologize.

COUNCILMEMBER TRACHTENBERG:

George, would you like some coffee?

COUNCILMEMBER LEVENTHAL:

No. What I need is my packet. What I need is my packet.

COUNCIL PRESIDENT ANDREWS:

It's still early in the morning.

COUNCILMEMBER LEVENTHAL:

Catherine Titus has served for quite a few years. She's extremely qualified, and I place her name in nomination to chair the board. We--let me just, um...shut up.

COUNCILMEMBER FLOREEN:

Second.

COUNCIL VICE PRESIDENT BERLINER:

Which are you seconding, the "shut up" or the nomination?



February 3, 2009

1
2 COUNCILMEMBER FLOREEN:

3 Both.

4
5 COUNCIL PRESIDENT ANDREWS:

6 All right. Donna Baron did also serve, with distinction, on the Board of Appeals.

7
8 COUNCILMEMBER LEVENTHAL:

9 You know, I have this thing about people who are not members of the Democratic Party.
10 Sometimes, you know--

11
12 COUNCILMEMBER FLOREEN:

13 All alike.

14
15 COUNCILMEMBER LEVENTHAL:

16 I appreciate their service, but sometimes I get them confused, so...

17
18 COUNCIL PRESIDENT ANDREWS:

19 All right. Well, you had-- you've mentioned two outstanding people in your remarks. All
20 right. So, the nomination of Catherine Titus--Catherine Titus has been nominated to serve
21 as the new chair. Are there any other nominations to serve as chair? Seeing none, the
22 nominations are closed, and we will then vote on the nomination of Catherine Titus, who is
23 currently serving as vice chair of the board, to serve as its chair. All those in favor of the
24 nomination, please raise your hand. And that is unanimous among the eight
25 Councilmembers here. Thank you very much, and congratulations to Catherine Titus. We
26 appreciate your current service and your willingness to take on this leadership role as
27 chair of the Board of Appeals. It's one of our most important commissions and one that we
28 are always very interested in because of the many issues that come before it that affect a
29 large number of communities in our county and individuals. So we know that the board will
30 be in good hands under her leadership, and we look forward to a productive term for the
31 entire board and congratulate both the new chair and the new member--Mr. Boyd. With
32 that, we will move on to number 5 on the calendar-- Action--resolution to approve the
33 following abandonments in Bethesda--a portion of Rugby Avenue and an alley off
34 Glenbrook Road. And the Transportation and Environment Committee has a
35 recommendation regarding this, and I'll turn to its chair, Nancy Floreen.

36
37 COUNCILMEMBER FLOREEN:

38 Thank you, Mr. President. The committee recommends approval of the request for
39 abandonment. I guess--we haven't discussed this. It is associated with the next item.

40
41 JEFF ZYONTZ:

42 Yes.



February 3, 2009

1 COUNCILMEMBER FLOREEN:

2 And I'll ask staff how-- whether we should consider that together.

3
4 JEFF ZYONTZ:

5 They are independent items. The findings regarding the abandonment concern its need
6 and whether it's needed for public use. The phrase in the statute is, you can abandon if it's
7 not needed for public use or if the abandonment is necessary to protect the health, safety,
8 and welfare of the residents in the neighborhood. It was determined by the Hearing --the
9 Hearing Examiner for the County Executive and DOT staff that this was not needed. This
10 is--these are parcels belonging to the same owner on both sides of the right of way. The
11 right-of-ways lead to a single property.

12
13 COUNCILMEMBER FLOREEN:

14 The committee recommends approval.

15
16 COUNCIL PRESIDENT ANDREWS:

17 OK. All right. Let's see if there's any discussion on that. I see Council Vice President
18 Berliner has a question or a comment.

19
20 COUNCIL VICE PRESIDENT BERLINER:

21 I just want clarification from our counsel with respect to this matter. This matter is, as you
22 say, independent of the next matter before us. It does not prejudice our decision one way
23 or the other with respect to the next matter. Is that correct?

24
25 JEFF ZYONTZ:

26 That's correct.

27
28 COUNCIL PRESIDENT ANDREWS:

29 OK. All right. I don't see any other comment, so I think people are ready to vote. And let's
30 see. I think this is not a roll call, if I'm correct--just a straight majority vote. OK. All those in
31 favor of the resolution to approve the following abandonments, which are a portion of
32 Rugby Avenue and an alley off Glenbrook Road, please signify by raising your hand. And
33 that is unanimous among the eight Councilmembers, and that is approved. All right. We
34 will now move on to our District Council session. First item is action on a resolution to
35 establish a public hearing for March 10, 2009, at 1:30 P.M., on the following corrective
36 map amendments-- G-871, Rosemont Section of the Gaithersburg Vicinity Master Plan,
37 G-872, the Sieling property at 14668 Southlawn Lane in Rockville, and G-869, which is at
38 Darnestown Road and Seneca Road in Darnestown. Is there a motion to establish a
39 public hearing on those items?

40
41 COUNCILMEMBER KNAPP:

42 So moved.



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

So moved by Councilmember Knapp. Second by Councilmember Ervin. All those in favor of establishing a public hearing, please raise your hand. That is unanimous among the eight Councilmembers. And that is set. All right. Item B on the District Council session is a resolution to establish a public hearing for March 10, 2009, 7:30, on an amendment to the Master Plan for Historic Preservation. The subject is the Falkland Apartments. Is there a motion to establish that?

COUNCILMEMBER ERVIN:

So moved.

COUNCILMEMBER KNAPP:

Second.

COUNCIL PRESIDENT ANDREWS:

Motion by Councilmember Ervin. Seconded by Councilmember Knapp. All those in favor of establishing that public hearing, please raise your hand. And that is unanimous among the eight Councilmembers. And now we will have an oral argument and consideration of a Hearing Examiner's report and recommendation regarding Application G-864, which involves 1.87 acres located at 8011-8015 Old Georgetown Road in Bethesda, and the action is regarding rezoning from R60 to PD-44. And we have--we approved this oral argument a few weeks ago, and we have 20 minutes, as normal, set aside for each of the sides. We'll hear first from the applicant, I believe.

JEFF ZYONTZ:

If we could have a minute to set up our model that you asked for--

COUNCIL PRESIDENT ANDREWS:

Please do. That's fine. We approved the use of the 3-D model as well for this hearing, and then I will turn to Jeff Zyontz at the beginning to see if he has any opening comments, and to the Hearing Examiner if they want to make some opening comments before the parties begin their argument. But each side will have 20 minutes to make their presentation, and they--the applicant can save some time for rebuttal if they wish by indicating at the beginning of their--

JEFF ZYONTZ:

The applicant has stated that he wishes to save five minutes at the end for rebuttal. There is just the one speaker for the opponents of the project, Mr. David Brown, so he'll have the full 20 minutes. No split of time there.

COUNCIL PRESIDENT ANDREWS:

OK.



February 3, 2009

1 DAVID BROWN:

2 Also, you should have, before we begin, those handouts.

3
4 JEFF ZYONTZ:

5 Excuse me. I have to get the rest of the packets.

6
7 COUNCIL PRESIDENT ANDREWS:

8 OK. All right. Yeah, let's see. This, uh... We agreed--on January 13th, the Council granted
9 the request for oral argument and limited the oral argument to four issues-- compatibility,
10 compliance with the Master Plan, compliance with the purpose and standards of the PD-
11 44 zone, and the public interest served by the proposed project.

12
13 DAVID BROWN:

14 Completely around.

15
16 COUNCILMEMBER FLOREEN:

17 That's not going to work.

18
19 COUNCIL PRESIDENT ANDREWS:

20 There we go. As is always the case, oral argument must be confined to the evidence of
21 record, as compiled--compiled by the Hearing Examiner, and any exhibit from the record
22 can be used during oral argument by any party, but it is limited to what is in the record.

23
24 DAVID BROWN:

25 These are the--

26
27 COUNCIL PRESIDENT ANDREWS:

28 Hold on just a second. I'll first see if our Hearing Examiner wants to make any opening
29 comments. She's here really as a referee.

30
31 FRANCOISE CARRIER:

32 Yeah, I really am just a referee, but there are two things I guess I would like to say. One--
33 oh, thank you. One is that if you wish to see the model from all sides, you may want to
34 come down out of your seats and just walk around the table briefly, because we can't
35 make it any more sort of visible than it is now.

36
37 COUNCIL PRESIDENT ANDREWS:

38 OK.

39
40 FRANCOISE CARRIER:

41 The second is that I discovered an unfortunate error in my report. I left out a crucial word,
42 "not," on page 135 of my report, which is circle 173, under "findings of whether or not the
43 proposal would be in substantial compliance with the use and density indicated by the



February 3, 2009

1 sector plan." I discussed why I thought it would not comply with the density recommended
2 by the sector plan, but in my concluding sentence, I wrote, "The Hearing Examiner
3 concludes that the proposed development plan does comply with the density
4 recommended in the sector plan," and it should have said "does not."

5
6 COUNCIL PRESIDENT ANDREWS:
7 OK.

8
9 FRANCOISE CARRIER:
10 That is the last line in the first paragraph on page 135.

11
12 COUNCIL PRESIDENT ANDREWS:
13 Circle 173. OK.

14
15 FRANCOISE CARRIER:
16 That error did not carry through to the proposed resolution, but I wanted to make it clear
17 on the record that it was a typographical error.

18
19 COUNCIL PRESIDENT ANDREWS:
20 OK. Thank you very much for noting that. And--let's see. Jeff Zyontz.

21
22 JEFF ZYONTZ:
23 Just on the preliminaries, of course, each side gets their time. Thereafter, the Council is
24 free to ask questions. There's --remember, the Civic Federation had said somebody is
25 here--Jim Humphries is here if you have questions, too, but that's up to the Council.

26
27 COUNCIL PRESIDENT ANDREWS:
28 OK. And Councilmember Floreen has an opening question that is parliamentary, I
29 assume.

30
31 COUNCILMEMBER FLOREEN:
32 Well, I have a concern, Mr. President. I hate to say this, but I wanted to raise it for the
33 record before we go further. In the past several weeks, my office has been contacted by
34 the attorney for the neighbors to discuss this case. And our policy is, we don't ever talk to
35 anyone about a pending zoning case. My staff was contacted several times by Mr. Brown,
36 and my staff was told that he met with other Council staff on this matter. Now, I don't know
37 why anyone would want to meet with our staff unless it was to convey something about
38 the record to us, because it takes time. So I have to raise this for the record. I think it's
39 inappropriate, and it's disturbing. I don't know what the remedy is, but we certainly have a
40 wealth of information within the record and material before us by which to evaluate this
41 matter. I think it is very troubling if applicants or complainants in a matter seek to bypass
42 the process by communicating with us or our staff with respect to a pending zoning
43 matter. And I don't know if it's an ethical violation, but certainly it violates our spirit of



February 3, 2009

1 transparency in decisionmaking. So, I want to raise that for the record, and I'd like Mr.
2 Brown to address it when he gets to his comments.

3
4 COUNCIL PRESIDENT ANDREWS:

5 OK. Well, let me turn to Councilmember Leventhal, and I think it might give Mr. Brown a
6 chance to address it right now, because that's a--well, go ahead and address it first, and
7 then I'll turn to Councilmember Leventhal. Is it the same--is it related to the same thing?
8 All right. Go ahead.

9
10 COUNCILMEMBER LEVENTHAL:

11 Well, Mr. Brown did meet with my staff, and we also received, over the email, a letter
12 concerning this rezoning from the Bethesda-Chevy Chase Chamber of Commerce, which
13 I disclose I clicked on and looked at, not realizing that it was ex parte, and then I
14 forwarded it to Mr. Zyontz and Mr. Fadden to disclose that it was ex parte. I'm going to
15 give everyone the benefit of the doubt because these ex parte rules are complicated and
16 not easy to understand, but it does bear discussion with the community, and it is on our
17 website about, do you want to participate in a zoning matter? We, in this role as the
18 District Council, are in a quasi-judicial capacity, and we are restricted only to consider
19 those things that are in the written record. It's unlike other matters that come before us,
20 where we can be lobbied and petitioned, and we will meet with our constituents. We can't
21 do that on rezonings, development plan amendments, or local map amendments. And so
22 it just bears reminding the community it can be very frustrating. The nature of oral
23 argument can be very frustrating because sometimes things will be raised that are not in
24 the record. The nature of the dialogue is, as the Council President has stated, strictly
25 restricted to those topics that the Council agreed to consider. Sometimes, either
26 proponents or complainants feel aggravated that their free speech rights are being
27 restricted. It's a sometimes cumbersome process, but it's in the--the purpose is good
28 government. The purpose is that we are not being lobbied. The purpose is that we are not
29 subject to political pressure. The purpose is that we're acting in a quasi-judicial capacity
30 solely on the basis of the arguments that the Hearing Examiner has already compiled.
31 That's counter-intuitive sometimes because it sometimes seems anti-democratic, but the
32 purpose is to insulate us from political forces when we're in this role as the District
33 Council. So it bears reminding everyone what the rules are, and I consulted with our
34 counsel overnight to be reminded what the rules were. I have not had any conversation
35 with my staff following my staff's courteous responsiveness when Mr. Brown requested a
36 meeting. It is commonplace, as I know it is for all my colleagues, if a constituent requests
37 a meeting, either with me or with staff, depending on the nature of the meeting, we take
38 the meeting. My office, as I know all of my colleagues' offices are, is very accessible, but it
39 does put us in a troublesome situation when anyone is violating the ex parte rules,
40 innocently or purposefully. Sometimes I think we all--I want to give everyone the benefit of
41 the doubt. We all need to be educated about what those rules are. I have not had any
42 conversation with my staff regarding the content of her meeting with Mr. Brown, but I know
43 that my Chief of Staff, Patty Vitale, did take the meeting. I've not been informed about



February 3, 2009

1 what conversation took place at that meeting, but I did disclose, and I disclose again here
2 today that I did skim the email from the Bethesda-Chevy Chase Chamber of Commerce,
3 which was also out of order, unfortunately.

4
5 COUNCIL PRESIDENT ANDREWS:

6 All right. Thank you. And I'll turn to Mr. Brown just to give him a chance to comment
7 briefly, and then we will move on to the oral hearing.

8
9 DAVID BROWN:

10 It is not my understanding that meeting with the staff of this type was prohibited by the ex
11 parte rules. If I thought it were, I would have never done it. What we are faced with here is
12 a record that involves four days of hearings, over 300 exhibits, a Hearing Examiner report
13 of over 150 pages, and I understand that the staff wants to try to come to grips with this,
14 and my purpose was to simply identify for them what we thought in the record was most
15 pertinent to your decision-making, to assist the staff in whatever way that might be helpful.
16 It was not an intent to evade the ex parte rules, and I conducted myself in those meetings
17 not as a--not in the form of oral argument, but rather in the form of just pointing out the
18 portions of the record that were pertinent to the issues in the case. And if I have--if some
19 feel that I have attempted to evade the rules, I certainly respected every staff response
20 that said, "We don't-- it's not our choice to meet with you." And I feel that I have conducted
21 myself properly. If the Council wants to make clear that such meetings are inappropriate, I
22 will be happy to oblige.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Thank you. I saw Mr. Zyontz wanting to say something, so-- you have experience.

26
27 JEFF ZYONTZ:

28 Just as a technical matter, that type of conversation is not barred. What would be barred if
29 --if information outside of the record were conveyed from the staff member to the
30 councilmember, it would be barred as ex parte. But staff can meet.

31
32 COUNCIL PRESIDENT ANDREWS:

33 All right. Councilmember Floreen, then Council Vice President Berliner, then we will move
34 on to the oral argument.

35
36 COUNCILMEMBER FLOREEN:

37 Well, I have to ask Mr. Brown, what was the point of the meeting if it wasn't to
38 communicate something that you have this opportunity to communicate right now?

39
40 DAVID BROWN:

41 All right.

42
43 COUNCILMEMBER FLOREEN:



February 3, 2009

1 You're not allowed to communicate with Councilmembers outside of this public hearing.
2 So communicating with staff-- the only point in identifying parts of the record is to get that
3 point to Councilmembers, because staff aren't making this decision. So I have to ask you,
4 what was your point in that meeting? To explain to people who have no role what your
5 case is? This is the opportunity for you to tell us what your case is.

6
7 DAVID BROWN:

8 The point is to get this information to the staff in advance of the time when the Council--
9 the Council, as I understand it, its practice is to make the decisions on these matters
10 immediately after the oral argument, but I wanted Council staff, to the extent that they felt
11 it appropriate as part of their job, to understand what we thought were the most important
12 elements in the record, and I confined myself to identifying what was in the record that
13 was important to us.

14
15 COUNCILMEMBER FLOREEN:

16 Well, how do we know what happened in these meetings-- what questions were asked,
17 what exchange occurred?

18
19 DAVID BROWN:

20 I don't know. I mean, that's between you and--

21
22 COUNCILMEMBER FLOREEN:

23 I mean, that is the point of the public hearing in front of the Hearing Examiner--

24
25 DAVID BROWN:

26 That's between you and your staff.

27
28 COUNCILMEMBER FLOREEN:

29 Well, then, it's a violation of the ex parte rules, if we talk to our staff about this, about a
30 conversation that they've had with you. You would certainly raise that if I had had that
31 conversation with someone-- with someone from the applicant's office about the record.

32
33 DAVID BROWN:

34 I simply envisioned that you would have a conversation with your staff about what the
35 important elements in the record were. That's all.

36
37 COUNCILMEMBER FLOREEN:

38 And that is the point of the ex parte rule...

39
40 COUNCILMEMBER TRACHTENBERG:

41 Exactly.

42
43 COUNCILMEMBER FLOREEN:



February 3, 2009

1 that we do not have extra conversations about what's in front of us.

2
3 DAVID BROWN:

4 I respect that point of view, and I--and I have--and I have not attempted to discuss this
5 matter with your staff when they said--if they had called me back and said--I believe it was
6 Rebecca called me back and said, "We're not going to have a meeting."

7
8 COUNCILMEMBER FLOREEN:

9 Right. Well, I know. We haven't had that conversation with you. But I have to ask the
10 Hearing Examiner, and I have to ask the county attorney, if this is in compliance with the
11 ex parte rules.

12
13 CLIFFORD ROYALTY:

14 Well, I agree with what Mr. Zyontz said. The ex parte rules, strictly speaking, don't apply to
15 meetings with staff, but I appreciate the point you're making. I understand the point you're
16 making. But strictly speaking, they don't apply to staff, so if staff did not convey
17 information to the councilmember, then there shouldn't be a problem. The remedy--you
18 had asked earlier, what's the remedy? The remedy is disclosure, which is I think what Mr.
19 Leventhal has done, is disclose. That is the remedy.

20
21 COUNCILMEMBER FLOREEN:

22 Yes. Indeed.

23
24 CLIFFORD ROYALTY:

25 Give people a chance to respond. So I think it has been remedied, so far as I can tell.

26
27 COUNCILMEMBER FLOREEN:

28 Well, I have to say, I think it's very inappropriate to proceed this way. We pride ourselves
29 on following the rules here, and I think tweaking of the rules, with the intention of
30 ultimately communicating to the councilmember, is as in violation as a direct
31 communication. I'm sure the applicant has a point of view about this, as well, but if we
32 need new rules on this subject, Mr. President, I think we need to enact them, and I would
33 call upon my colleagues, if they received information outside the record that we're having
34 today, to disclose that. And I'm not-- certainly not suggesting that there's anything
35 inappropriate on this side, but I am suggesting there's something inappropriate from Mr.
36 Brown's position.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Council Vice President Berliner.

40
41 COUNCIL VICE PRESIDENT BERLINER:

42 Well, let me just observe that my staff met with Mr. Brown, and my staff advised me of
43 that, and my staff and I had an explicit conversation that that will never happen again, and



February 3, 2009

1 I got no information from her with respect to that, and I think my staff appreciates that
2 probably wasn't the right thing to do in that moment, and it will not happen again. But I
3 would like clarification with respect to the scope of the ex parte because the fundamental
4 point is whether or not information is being conveyed that is outside the hearing record, so
5 I am curious with respect to the distinction between staff and members with respect to
6 this. Let's assume for purpose of this conversation that Mr. Brown had talked with me
7 directly with respect to only matters that are within the hearing record. Would that have
8 been permissible?

9
10 FRANCOISE CARRIER:

11 No. Your staff could speak to Mr. Brown. You could not speak to Mr. Brown.

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 OK. I could not speak to Mr.--

15
16 FRANCOISE CARRIER:

17 The way the ex parte rule is written, it doesn't--it actually states that the decisionmaker
18 cannot rely on any information that is gained outside the public record. That's the
19 phrasing. They don't direct it at, "You may not talk with," or, "You may not meet with."
20 What they are talking about is your reliance on information. I suspect it was written in
21 recognition of the reality that people will sometimes unknowingly be exposed to
22 information outside the record--getting a letter that they don't know what it is and they
23 skim it, or someone stops them on the street and they have a conversation, and three
24 sentences into it, they realize that it's about a zoning case. There--it's inevitable that there
25 will be moments when you receive information that's outside the record, and the remedy,
26 as our county attorney stated, is disclosing it. You disclose that you had--that you got this
27 information, and then you say, "I'm not going to rely on it." And that cures the problem.

28
29 COUNCIL VICE PRESIDENT BERLINER:

30 And I do understand, as a lawyer, the distinction between that which is in the hearing
31 record and that which is not in the hearing record. My question was a little more narrow
32 with respect to that, which is, assuming that all the conversation or all the communication
33 is about matters that are within the hearing record--

34
35 FRANCOISE CARRIER:

36 It's actually--I believe--

37
38 COUNCIL VICE PRESIDENT BERLINER:

39 Suppose Mr. Brown had come by to my office and given me a-- citations from the hearing
40 record, a one-page summary document that was citations to the hearing record with
41 respect to the points that he thought were most important. Would that be a violation of the
42 ex parte communications?



February 3, 2009

1 FRANCOISE CARRIER:

2 I suspect that it would. I don't have the text in front of me, but I believe the way it was
3 written, the intent, in addition, as Mr. Leventhal said, to sort of insulating you somewhat
4 from the politics in these quasi-judicial matters, another intent is protecting the rights of all
5 parties. Everyone in the case is entitled to know the content of all communication, all
6 information that's going to the decisionmakers, and to be able to respond to it. So even if
7 it's just a list of citations to the record, if that's given by one side, well, the other side
8 doesn't have the chance to say, "Oh, oh, here are the citations I think you should look at,"
9 because inevitably, each side will have different views about what's the most important
10 part of the record. So there's no-- just citing to the record, in my view, is not--does not
11 carve out an exception to the ex parte communication rule.

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 Then I would share Councilmember Floreen's views with respect to this matter, that if this
15 information is not permissible to be given directly to us-- assuming it was, for purposes of
16 this conversation, only matters within the record--if it's not permissible to be given directly
17 to us, I see no purpose gained in having it given to our staff. So I would share in your
18 views with respect to this matter and that it is something that we may want to look at
19 clarifying going forward.

20
21 FRANCOISE CARRIER:

22 This comes up every few years.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Mm-hmm. Yeah.

26
27 COUNCIL VICE PRESIDENT BERLINER:

28 Yes, it does. That's true.

29
30 FRANCOISE CARRIER:

31 I mean, you know, I've been here 7 1/2 years, and every few years some case, some
32 attorney goes and speaks to staff, and everybody--we have this same conversation.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 Why don't we--let's--this is not--we did have Groundhog Day a couple of days ago, but I
36 think we can--

37
38 FRANCOISE CARRIER:

39 We don't have to relive it.

40
41 COUNCIL VICE PRESIDENT BERLINER:

42 We don't have to keep reliving this.



February 3, 2009

1 STEVEN KAUFMAN:

2 Mr. President.

3
4 COUNCIL PRESIDENT ANDREWS:

5 OK. Hang on just a second. I think this is something that we will come back to, and I agree
6 that the definition of decisionmaker should be broadened to the "office of councilmember."
7 It shouldn't just be the councilmember themselves. It really should be treated as one
8 entity. So I agree with those comments, and I will give Mr. Kaufman a brief time and then
9 go to our colleagues, and then I want to move on as soon as we expeditiously can
10 because we will come back--I agree that we need to revise the current language of that
11 restriction.

12
13 STEVEN KAUFMAN:

14 Mr. President, I was about to request a few moments before my time begins to address
15 this subject, if that's all right.

16
17 COUNCIL PRESIDENT ANDREWS:

18 All right.

19
20 STEVEN KAUFMAN:

21 Well, first of all, good morning, Mr. President and members of the Council.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Well, your time is not actually --we have a couple of other comments here first, so I want
25 to go--let's get the other comments from Councilmembers on first, and then I will turn to
26 you, and then we need to get started. Councilmember Leventhal, then Councilmember
27 Elrich.

28
29 COUNCILMEMBER LEVENTHAL:

30 Last night, because I faced every possible permutation of violating or not violating the ex
31 parte rule on this case yesterday, I spoke with Mike Faden to clarify for my own benefit
32 what conversations were permissible and which were not. And my understanding from
33 Mike Faden was that the email from the Bethesda-Chevy Chase Chamber of Commerce--
34 which, again, I give everyone the benefit of the doubt--I'm sure was innocently meant, it
35 was advocacy on behalf of a chamber member--was out of order, ex parte, not
36 appropriate. The conversation between Mr. Brown and my chief of staff was within the ex
37 parte rules and was permissible. My staff's ability to talk to me was constrained but
38 permissible, and a Council colleagues' interest in discussing this matter with me, as long
39 as it stuck to the hearing record, was constrained but permissible. The latter two, it seems
40 to me, put ourselves and our staff in a very difficult judgment call that is undesirable, and
41 so my suggestion would be, even though according to our attorney's interpretation of the
42 ex parte rules, that we ought not engage in it. Where we have a--number one, I would
43 advise the Land Use Bar, whatever side, whatever client base they tend to have, not to



February 3, 2009

1 contact our offices. That would be my advice. We can change the rules, but even if we
2 don't, we'd prefer you not put our staff, and we'd prefer you not put us, in that situation.
3 Again, I'm not pointing a finger at anyone here. I mean, mistakes were made, to quote the
4 cliché, on everybody's part. Number two, I think even though the rules may allow it, I think
5 Councilmembers ought not discuss these matters with each other, because once it's--
6 once we're called on, we'll state our position. I mean, we tend to be particularly interested
7 in what the District Councilmember thinks--if it's in the district, that that individual will state
8 her or his view on the public, you know, on television, and we'll all hear it. My suggestion
9 would be that we all try to avoid placing each other in these difficult judgment call
10 situations so that where a matter is ex parte, I would think, just as a matter of practice,
11 whether we codify it or not--and I'm certainly open to codifying it--let's not talk about it. You
12 know? Let's read the record, read our packet, we'll be here in public, we'll discuss it
13 together. It's very difficult--I appreciate Francoise Carrier's excellent work. She's one of
14 our best staff people here in county government, and I appreciate her clarification, which
15 is very important, that the purpose of these rules--there are a few purposes. I've
16 mentioned a few. But the additional purpose which she highlighted is that nobody gets
17 special access. And that's really what she's saying, is that one side doesn't get to present
18 a special case, perhaps because the perception is they have a special relationship--
19 because the political nature is in that, as well. The point that you make is also political,
20 that --you know, let's face it. I mean, not to put too fine a point on it, the perception is that
21 attorneys who represent builders have better access than attorneys who represent
22 citizens. Now, in this case-- well, builders are citizens, too. I want to be careful with my
23 own vocabulary. But I'm trying to spell this out--I'm trying to spell this out in plain English
24 so that the people who watch us don't scratch their head and say, "What is this? Why do
25 they have these cumbersome rules? Why do they erect these barriers that make it hard
26 for the public to get in contact with their elected officials?" It isn't intuitively easy to
27 understand on its face, but the reason we have them is fairness, even-handedness, a
28 level playing field for all parties to these very narrow decisions about what is and what is
29 not within the law and where it's appropriate to change the law in a particular land use
30 case. So that's why these rules were erected a long time ago, long before any of us got
31 elected to office. But I would suggest that we do widen the gate around ourselves and
32 secure the lock and make it harder to get in, and so I would suggest that we ourselves
33 apply that to our staff, that we convey the message to the Land Use Bar that we don't
34 want them to meet with our staff or with us, and that I would also, frankly, apply that to
35 discussions among ourselves, because I've received different messages--early on, Mr.
36 President, actually, I was a brand-new Councilmember, and I had so much respect for you
37 and your experience, and I said, "What do you think about this?" This was maybe my
38 second week on Council. And you said, "George, we can't talk about that." And I said,
39 "OK. Fine." That was helpful to me. It turns out we probably could have talked about that,
40 so I could go back now to that packet and say, "Phil, what do you think?" But...but I think
41 your instinct, Mr. President, was correct at that time seven years ago, and I think we
42 probably ought to apply that as a rule of procedure for ourselves, either formally-- whether
43 we codify it or not, I don't much care.



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

Yeah. I think you're right that we need to change the language so that we achieve the second goal, which is not only that only information on the record is considered, but that everyone has access to arguments about it at the same time, to the greatest extent possible, and so if you have individual conversations going on, you don't have access by everybody at the same time, rebutting it or hearing it, and you don't achieve that. And so I think we need to do what we need to achieve that. And with that, I'll turn to Councilmember Elrich, then Councilmember Floreen, and then we'll go to the oral argument.

STEVEN KAUFMAN:

Well, I need a few minutes before we start.

COUNCIL PRESIDENT ANDREWS:

I'll give you a couple of minutes.

STEVEN KAUFMAN:

OK. Thank you.

COUNCIL PRESIDENT ANDREWS:

OK. Councilmember Elrich.

COUNCILMEMBER ELRICH:

I'm not having a discussion with my staff regarding this. I was going to say I don't know if my staff had ever met with Mr. Brown about this, but Dale just texted me and said that he did meet with Mr. Brown, but Dale never told me, so I had no idea that they had met, and I've had no discussions about this. I guess I'm curious as to when the clock starts, because I will say that I was lobbied about this, and had specifically a discussion about why the thing could be abandoned before there was a case in front of you. And it seems to me that, you know, that people know the cases are coming or that they're going to take "X" action, and they have access to us at that point, and so I knew the arguments, you know--at least, I was given arguments about why this should be abandoned and why the heights were OK and why this was a bunch of NIMBYs who were just opposing this wonderful project. I'd heard this before it was ever before the Board of Appeals, in front of you. So I'm perplexed about when the clock starts on this, because it seems to me we need a clock starting really, really early. We can't have-- if people know it's going to come, this is the direction it's going to come, then we ought to have conversations early, early on. And I'd say, does this Council--are we going to extend this to other decisions we're going to make? We're about to make decisions about Master Plans. I know we've all been lobbied by people who have great stakes in where these Master Plan changes are going to come, and we're going to be asked to make decisions that greatly affect, you know, the value of things of--depending upon how we come down on density and other issues. So I



February 3, 2009

1 think that there is an awful wide gray area here, and I guess we have to negotiate it
2 carefully, but I'm just a little concerned. But for my own part, I haven't had anything since
3 this thing's been in front of the Hearing Examiner.
4

5 COUNCIL PRESIDENT ANDREWS:

6 OK. Well, you've raised a large issue there, which we can come back to on that. There's
7 clear sentiment for addressing this issue, and we will, although we can't change--won't
8 change what the rules are today, but we will come back to it soon. Councilmember
9 Floreen, then Councilmember Trachtenberg.
10

11 COUNCILMEMBER FLOREEN:

12 Thank you, Mr. President. Well, I'm glad this information has triggered a real conversation
13 about our ethical obligations and those of our offices. I would call for a full-scale review of
14 Council ethical rules, and I'm not sure if it's in code or in regulation, where it is, but I think
15 we need to look at this very seriously. I will point out I am also aware of situations in which
16 Councilmembers and their staff have attempted to influence other kinds of decisions--
17 decisionmaking, at the Planning Board, in particular, and those are situations which I think
18 we should give some serious attention to, so if we can put that one the MFP--whichever
19 committee's agenda that is. In our copious spare time, I think this is the time to--
20

21 COUNCILMEMBER TRACHTENBERG:

22 It would probably be MFP's.
23

24 COUNCIL PRESIDENT ANDREWS:

25 OK.
26

27 COUNCILMEMBER FLOREEN:

28 Oh, good.
29

30 COUNCIL PRESIDENT ANDREWS:

31 Good.
32

33 COUNCILMEMBER TRACHTENBERG:

34 Lucky me.
35

36 COUNCIL PRESIDENT ANDREWS:

37 MFP Committee chair is shaking her head yes.
38

39 COUNCILMEMBER FLOREEN:

40 I think this is the time to do that.
41

42 COUNCIL PRESIDENT ANDREWS:

43 OK. I think you--I think that's right.



February 3, 2009

JEFF ZYONTZ:

Just a point for the record, Mr. Leventhal, you did say that you will not rely on the information that you saw on that email or any other information--

COUNCILMEMBER LEVENTHAL:

That's correct. I--the time I spent with the letter was about 15 seconds, and I realized I shouldn't be reading it, and I stopped.

JEFF ZYONTZ:

Thank you.

COUNCIL PRESIDENT ANDREWS:

All right. In the spirit of that, I will turn to Councilmember Trachtenberg. If anybody else wants to make any disclosure they feel important to make at the beginning of the meeting, please do so, and then we'll have that all done beforehand, and that's appropriate. Councilmember Trachtenberg.

COUNCILMEMBER TRACHTENBERG:

Well, I went over to call my office downstairs because I knew that a request had been made, and I just wanted to make sure that I understood it hadn't-- no appointment had come about after the request was made, which apparently was the case. But, you know, I would agree with the concerns that have been voiced by a few of my colleagues, including Councilmember Floreen initially, and, you know, one of the things that, you know, we've discussed specific to my staff is one of the issues here is yes, someone could come in, technically, and meet with someone on a councilmember's staff, but let's remember that the information that would be provided to them could also be shared with other staff members, either within that councilmember's office or else other council offices on the floor. So in my opinion, that's another part of what we need to discuss down the road, and, you know, I think this has been a very useful conversation. And, you know, my understanding about this from the very beginning was that I had to operate with simply what was provided to me that was part of the record, and that that was narrow, yes, but that's the way that the decision needed to be made. And it would seem to me that we're going to have to really address the issue of information flow.

COUNCIL PRESIDENT ANDREWS:

OK. Very good. And in case people are curious, the policy in my office is not to meet with applicants regarding cases coming before the Council. All right. Now we'll turn to Mr. Kaufman, who will have a couple minutes--

STEVEN KAUFMAN:

A few minutes before my time begins.



February 3, 2009

1 COUNCIL PRESIDENT ANDREWS:

2 Yes. So hold off. Go ahead.

3
4 STEVEN KAUFMAN:

5 Well, Mr. President, thank you for this opportunity to address what I consider a very
6 unpleasant surprise this morning. The first thing I want to do is very strongly object to the
7 actions by counsel for the opposition. I could certainly understand it from a layperson, a
8 member of the Chamber of Commerce, but not by a very experienced advocate in the
9 land-use area. The ex parte rules are not that difficult to understand. I view it as an
10 attempt to unduly influence this Council in a decision. You already have a very strong
11 report--135 or 140 pages from the Hearing Examiner--which we have to address this
12 morning, and I must say, for purposes of the record, if this case should go to judicial
13 proceedings, I intend to ask for discovery to examine the people who met with Mr. Brown.
14 It's not so much what you say about what's in the record--I mean, that you talk about
15 what's in the record. It's the emphasis that you put on that. And I must say, I was asked by
16 many, many people in the applicant, "Can we talk to anybody? Can we send letters?" And
17 I gave very strong instructions many times that you cannot talk to anybody at the Council.
18 You cannot talk to their staff. I'm very sorry that you received something from the
19 Chamber of Commerce, because we instructed our clients to tell all of their app--all of
20 their supporters not to address you. I've been doing this for 36 years, and this is the first
21 time that I've ever seen such a violation of the rules of ethics before this Council. With
22 that, I'll stop at this, and I just would like to, before I begin--

23
24 COUNCIL PRESIDENT ANDREWS:

25 OK.

26
27 COUNCIL VICE PRESIDENT BERLINER:

28 I would just like--I would just like to clarify. With the greatest respect, Mr. Kaufman, I want
29 to make sure that I heard our unanimous Council, our attorneys, advise, that none of
30 those communications were, based on the law that exists today, in violation of the ex
31 parte rules. As to whether they should be in the future is a different conversation. As to
32 whether or not our staff was in a position to convey anything to us is a different
33 consideration. But whether or not those communications were technically in violation of
34 the ex parte rules and therefore unethical, we have heard from one, two, three lawyers,
35 who advise us with respect to that, that it was not. So I want you to back off a little. I
36 believe it was inappropriate. I believe that we've all indicated not one of us have had a
37 conversation with respect to our staff with respect to these matters. And there has been
38 no technical violation of the ex parte rules. It was wrong, it shouldn't happen in the future,
39 but don't overstate it.

40
41 STEVEN KAUFMAN:

42 Well, that first of all, is an opinion. It is not a decision by a court. And I've made my
43 objections, and I intend to have them stand.



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

All right. You can start the time period now for the applicant.

STEVEN KAUFMAN:

With respect to the presentation, I've given you two handouts, which I will refer to. You have some from the--from the opposition, which are not mine. First, Mr. President, for the record, I am Steve Kaufman. I'm an attorney with the law firm of Linowes and Blocher, and I represent the applicants in this case, which are--it's a joint application by the members of Christ Lutheran Church and the Bozutto Company. Many of the people from the church and their supporters are here behind me today. Secondly, I want to thank the Council for this opportunity to present oral testimony to you. This is a very significant case, not just for this applicant, but for many institutions that provide the types of services that are very badly needed in these times, before you. Before I begin, I would like to acknowledge that the Hearing Examiner in this case conducted a thorough--a thorough, professional and fair hearing. Even though we do not agree with the positions of her written analysis and conclusions, which is the reason why we're before you here today, we do appreciate the very professional manner in which the hearings were conducted and the courtesies extended to our client and the witnesses by your very able Hearing Examiner. As you're aware, there's a very significant difference of opinion in this case between the findings of the technical staff at the Planning Commission, the Planning Board, and your Hearing Examiner. The issue really boils down, in my opinion, to, what is the paramount public interest to be served here? The Hearing Examiner has focused on the physical proximity of this project to its most immediate neighbors. We believe that she has fallen into the trap of just focusing on the most immediate neighbors and that physical impact and has disregarded the very important public interest which is to be served in this area. The public interest is the interest for the entire area, not just the most immediate neighbors, and it is the prerogative of this Council to determine what that public interest is. She has thrust the physical impact as the main reason why she feels that this case should not be approved. Everything else flows from that. So all of her decisions with regard to compliance with the Master Plan, meeting the Purpose Clause of the zone--they all flow from her determination, quite candidly, that this project is just too large for this space in relationship to its most immediate neighbors. What is interesting, if you look at this exhibit, which is Exhibit 313-B in the record, and you look at this area, this is a very urban area. The neighborhood of small homes or of individual single family homes is surrounded entirely by large buildings in a very urban setting. Most revealing is this other exhibit, which is entitled Bethesda Transportation Management District. If you look at that and you ask yourself the question, what doesn't fit here, it's this small neighborhood along Rugby Avenue that is the odd man out. Everything else is urban, and it's very--this is the most telling exhibit of all. Everything is urban. Now, we concede that these structures are large structures, and they're in a tight space, but you have to look at it in the context of where it is. It is immediately adjacent to the CBD boundary, and immediately adjacent to this property is a --excuse me--11-story building which is immediately adjacent to the property.



February 3, 2009

1 Also, if you look at the photograph, right behind the houses on Glenbrook Road is a
2 project that is nine stories tall that you've just approved. It's this little project right here--
3 right behind these houses, almost with the same proximity to those houses as the subject
4 property. The Planning Board determined that it was compatible, and the Planning Board
5 also said if there are some compatible issues, they can also be addressed at site plan.
6 Also, I did forget one thing--I do want to reserve five minutes for my rebuttal. So
7 everything else --the issue of compliance with the Master Plan, the issue of meeting the
8 Purpose Clause of the zone, they all flow from this one finding of the Hearing Examiner
9 which flows throughout the entire report, that the project is just too large. In every other
10 respect--with regard to traffic impact, with regard to utilities availability, with regard to
11 every other aspect--green space provided--the Hearing Examiner found that this project
12 complies with both the Master Plan and the Purpose Clause of the zone. In every other
13 respect. The PD-44 zone is in the nature of a Special Exception, and that means that it is
14 predetermined to be compatible if certain other factors are found. A good case that is a
15 good example of that is a case called Beale ????? versus Montgomery County, and in
16 that case, it says that--it's a good example. It says, an example of valid zoning--"if the
17 zone is in accord and harmony with the comprehensive zoning plan and is done for the
18 public good, the zone, although implemented by legislative action, is in the nature of a
19 special exception, requiring a detailed development plan." And that's exactly what you
20 have here. You have a detailed development plan, which will be implemented in exactly,
21 all of its respects. A lot is made of the issue of proximity, which is on the other side of this--
22 - this big exhibit that they have, this model--of the closest houses. What is very significant
23 is that the applicant has made several attempts to further remove the project and to--on
24 the first two levels, the fenestration of the buildings, to give the scale of the buildings so
25 there is compatibility. These houses, many of which are very large and recently built, are
26 not here because they want to enjoy a suburban setting. They're here because they want
27 to enjoy the benefits of the urban area that they're in and the walking to restaurants and
28 other facilities in downtown Bethesda. So you have to look at the issue of compatibility in
29 the nature of the location, which is urban, which is all tight spaces. The Planning Board
30 unanimously recommended this rezoning and found that it was compatible with the
31 existing and proposed uses in the surrounding area and that it conformed to the
32 requirements of the PD zone. The services provided by this church are irreplaceable.
33 They badly need to be able to revitalize their facility, stay where they are, and they need
34 the benefits of this project to both build a bigger facility so that they can continue and
35 expand their mission, and also that they have the resources from the residential project.
36 The services include child care, homeless programs, counseling for youth and families,
37 recreational facilities for youth and for the elderly. The gym, which is this building right
38 here, is very, very important to the church. We have an exhibit that shows... The
39 residential building is this building here. It's approximately eight stories tall. For the
40 majority, it's about 90 feet. There is one point that goes up higher. The facilities that are
41 served are primarily in the renovation of the existing church facility and a number of
42 different things. There will be incubator space for nonprofits. But the gym is the key for
43 their ability to serve the public and to serve the youth, and there are no other gyms of this



February 3, 2009

1 nature in the area, nor are there any other churches in the Woodmont Triangle that can
2 provide these services-- services of this type. So again, the key issue--the key issue is,
3 what is the paramount public interest? And I'll again say to you, that is your prerogative. Is
4 it the proximity to these few houses, or is it the benefits served by this project should it be
5 approved? Excuse me one second. We believe that the Hearing Examiner has
6 unfortunately minimized the recommendations of the Planning Board and the technical
7 staff on the key issues, particularly downplaying the public interest that will be served by
8 the proposed project through the erroneous and narrow interpretation and analysis of
9 what constitutes public interest. The report fails to evaluate public interest on the basis of
10 all zoning power--on the basis that all zoning power must be exercised for the protection
11 and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the
12 regional district. This project serves all of those interests, and it's absolutely important to
13 the public interest and--to continue these facilities in that area. In other words, the public
14 interest doesn't say what is most important to the people who just live next door to this
15 facility. She also fails to recognize and place emphasis on the fact that this project will
16 serve the county's public housing policy and introduce, as the Master Plan said, housing
17 in this area, including 17 badly needed MPDUs. She also did not put enough emphasis on
18 the issue of environment. This will be a LEEDs qualified building, perhaps at one of the
19 highest certifications, and also replace what is now basically a total area of asphalt. I want
20 to turn to a few exhibits, if I could. First, over here you have an existing picture facing
21 towards downtown Bethesda of what is presented along Old Georgetown Road. There's a
22 part of the Hearing Examiner's report that says all the "specimen trees" will be removed. I
23 suggest these are not necessarily specimen trees, but more just volunteers that grew up
24 over time. Then we have a--if we could pick... Now this is a--this is a--

25
26 FRANCOISE CARRIER:

27 I have to say that it's not in the record whether those trees are volunteers or replantings.

28
29 STEVEN KAUFMAN:

30 Oh, OK.

31
32 FRANCOISE CARRIER:

33 So I would suggest the Councilmembers try not to rely on that.

34
35 STEVEN KAUFMAN:

36 Well, we don't believe they are specimen trees.

37
38 FRANCOISE CARRIER:

39 Specimen trees, as you know, are defined by the Park and Planning as having a certain
40 caliper.

41
42 COUNCIL PRESIDENT ANDREWS:

43 Button.



February 3, 2009

CLIFFORD ROYALTY:
Press your button.

FRANCOISE CARRIER:

Oh, I'm sorry. Specimen trees-- that word is used in my report the way that Park and Planning uses it, which is based on the caliper of the tree, not whether it is subjectively a beautiful tree or desirable.

COUNCIL PRESIDENT ANDREWS:
Right. OK.

STEVEN KAUFMAN:

Well, I think the picture speaks for itself. This is another rendering of the same view. It shows you that the area along Old Georgetown Road will be much more pedestrian friendly, will have a significant amount of landscaping, and provides a much better overall interaction with the immediate area that it's next to. And you can see this 11-story building right next door. It doesn't look out of scale, to me, to that. Then we have another picture, which is looking at the same view, but now looking away from downtown Bethesda along Old Georgetown Road. And you can see again that the scale and the compatibility does not appear to be out of character. I'm sorry. OK. I'll stop right there, and I understand that the rest of my time is for rebuttal.

COUNCIL PRESIDENT ANDREWS:

OK. Thank you, Mr. Kaufman. Mr. Brown, you have 20 minutes.

DAVID BROWN:

Mr. President and members of the Council, thank you for this opportunity to speak on behalf of the citizens in the area of this project to support the excellent report of the Hearing Examiner. Just as a final word on the prior topic, let me say that whether you change the law or the rules or not, I've learned enough here today to know that it's not going to be a good idea for any kind of a repeat of those meetings, and certainly from my perspective, it won't be happening again, regardless of what you do. But moving on from that, I believe that the Council should adopt the Hearing Examiner's recommendation because it is a thorough assessment of the evidence, it contains a full discussion of the contested issues, it correctly applies the facts, the undisputed facts, to the applicable law, and that the attempts made by the applicant to undermine that decision here today are without merit. The Hearing Examiner correctly understood what we're dealing with here. We have a 1.87-acre site where it is proposed that there be 107 apartments to a height of 114 feet--eight floors--that the floor area of this apartment building would be 188,000-some square feet-- all the floors considered together. How much is that? 4.4 acres of floor area in this building alone. In addition, the church would be retained. The community center would be greatly enlarged. That's another 1.25 acres of floor area--76 feet in height



February 3, 2009

1 over there. The nearest single-family house, which you can see right over there in that
2 corner, is 20 feet away from the 76-foot-high wall and 40 feet away from the 114-foot-high
3 wall. Just as in real estate, the three most important factors are location, location, and
4 location, the three most important factors in a rezoning in a residential area are
5 compatibility, compatibility, and compatibility. To quote the Hearing Examiner, "too big, too
6 cramped, too close to single-family houses." Let me turn first to the issue of compatibility.
7 The Planning Board said that the compatibility with the single-family houses needed to be
8 addressed at site plan. Mr. Kaufman argues that was really just the opinion of the
9 chairman, Royce Hanson, but the letter is on behalf of all of the commissioners, it is the
10 opinion of the entire Commission that something needs to be done about single-family
11 housing compatibility with regard to this plan. The Hearing Examiner properly under the
12 law rejected the notion that we can wait until then to address compatibility. She pointed
13 out that under the rezoning standards in Section 1.61, you must make a finding of
14 compatibility now. And that is, in her terms, "a fundamental obligation" that you have right
15 now. And for that reason, because the Planning Board misunderstood your legal
16 requirement, she attached less weight to the Planning Board recommendation, or finding
17 of compatibility, which we think is an eminently appropriate thing to do. I would also point--
18 add to that that if you look at page 23 of the Woodmont Triangle sector plan, it addresses
19 block 19, which is what this block is, and it says, toward the end of page 23--

20
21 COUNCILMEMBER BERLINER:

22 Can you point us in the document for us?

23
24 DAVID BROWN:

25 This is--you have an excerpt from the Master Plan from me, and the key paragraph is the
26 paragraph on block 19 on page 23, and the next-to-the-last sentence begins with the
27 words "at the time of rezoning." Those words modify what follows next, which is "any
28 application should be reviewed to determine compatibility with existing family homes." So
29 your own Master Plan reinforces the statute and says compatibility needs to be addressed
30 now. The Planning Board staff said that it found compatibility on the basis of the fact that
31 single-family homes in this area were going to be redeveloped, and it also felt that strict
32 compliance with the Master Plan could be excused because of all of the church charitable
33 works that were going to be enhanced by this project. The Hearing Examiner found,
34 contrary to the recommendation of the staff, after hearing all of the evidence, that this is a
35 thriving neighborhood, not a neighborhood in urgent need or planned obsolescence or
36 redevelopment. She also found in the record no proof that this particular level of
37 development was needed for the church to continue to fund and operate its ongoing
38 charitable works. The Hearing Examiner also had the benefit of the testimony of a
39 professional land planner, which the citizens hired to present testimony in the case--Mr.
40 Ken Doggett. Mr. Doggett said that a less-massive development was certainly possible for
41 this project. And I want to point you to two photographs that are in the record which you
42 have copies of here, in the handout. These photographs are not of the church property.



February 3, 2009

1 They are actually photographs of a church property down near Washington National
2 Cathedral, where Mr. Doggett lives, and the essence of Mr. Doggett's--

3
4 COUNCILMEMBER LEVENTHAL:

5 ????? Is this in the record?

6
7 FRANCOISE CARRIER:

8 It is in the record, yes.

9
10 DAVID BROWN:

11 The essence of Mr. Doggett's testimony was that it is possible for there to be a viable
12 partnership between a residential developer and a church to redevelop a portion of church
13 property with residential and still be compatible with the church. This is exactly what
14 happened in his neighborhood. And this shows the level and scale and size of
15 development that he regarded as compatible between a church and an adjacent
16 apartment building. He said this would be the kind of transition that would make sense
17 from a land planning perspective. The other thing that the--that the Planning Board staff
18 did not have was the benefit of our model. This model was prepared, at considerable
19 expense, by a professional. And how did he do that? I also have handed out to you the
20 elevation sheets that were presented in the record by the applicant. He simply took these
21 elevation sheets and, using the techniques of scale model building, basically pasted these
22 elevation sheets on a mass model of the site. This site is--this model is accurate as to
23 scale in both the vertical and horizontal, and it's in evidence not as a perfect replication of
24 the site, but as a massing model. And again, I point out to you, the one--the particular
25 property, the client who basically funded this model is Mr. Estreicher. His house is the one
26 that's closest, tucked in there, and as I said, it's 20 feet away from a 75--76-foot-high
27 building and 40 feet away from a 114-foot-high building. On the issue of Master Plan
28 compliance, the Hearing Examiner found that compatibility was an important element of
29 the sector plan for the site. She emphasized that compatibility is mentioned several times
30 in the course of the sector plan. The concept-- the sector plan also has this concept of
31 stepping down in height away from the Metro station, and you can see from-- even from
32 Mr. Kaufman's exhibit that, um... we're really right here at the edge between the built-up
33 area of the central business district, and everything to the south and west is single-family
34 residential. So we're right there on the edge. We're in the area where we should be
35 stepping down, not stepping back up again. The Hearing Examiner found that the height
36 disparity, considering the distances away from these single-family properties, was simply
37 incompatible. The--she looked and analyzed the height limits in the sector plan, and I
38 would --I would point you again to one particular page in the sector plan, and that's a
39 diagram on page 12 which shows the proposed building heights for the sector. And you
40 can see from this plan that for most of the area along Rugby and Glenbrook, the height
41 limit is 35 feet. The only area where it's not 35 feet is right there on the front of Old
42 Georgetown Road, where the church property is. So what we have here is a plan that
43 incorporates the frontage property, which doesn't have that height limit, and part of the



February 3, 2009

1 back property, which does have a 35-foot height limit. And she felt that the proper way to
2 understand what the height limit recommendation in the Master Plan was, when you have
3 part of the property with a 35-foot height limit and part of the property with no height limit,
4 was to look to the explicit language in the plan for guidance, which says that PD-44 zoning
5 is recommended for the property not in an unqualified sense, but only as, to quote the
6 plan, "provided that issues of compatibility with existing family homes can be addressed."
7 So again, we're back to focusing on compatibility. So it's not an un--unlike the situation in
8 many Master Plans, where a specific site is recommended for particular zoning without
9 qualification, it's very clear that the PD-44 zoning for this property is not unqualified but is
10 explicitly qualified to your being assured that the--that compatibility is satisfied. Mr.
11 Kaufman makes much of the fact that the Hearing Examiner is deemphasizing the public
12 interest, but she analyzed the law, not just the facts. She acknowledged that there is
13 extensive evidence in the record of the church's good works, but she said that the legal
14 standard is not the impact of the project on good works. You don't approve a project just
15 because it enhances the good works of the church that's on the property. You must look at
16 consistency with the public interest as an additional factor in addition to the basic question
17 of compatibility, not instead of the issue of compatibility. I'm basic--that's almost a direct
18 quote from her report on that, and I think that's exactly right. You have to make a finding
19 on compatibility, and compatibility is not a function of the good works of the church, which
20 are undisputed on this record by--by anyone. She found no evidence in the record that
21 this particular scale of development was necessary for the church to meet its goals of
22 public service in the community. For there to be--for there to be evidence, credible
23 evidence in the record on that score, they would have had to go through an economic
24 analysis which demonstrated they really needed this much to make things work--that they
25 couldn't have gotten by with less. In other words, a less intense project of the type that Mr.
26 Doggett spoke about in Washington. There just is no evidence in the record that they had
27 to have this much. And she also found that--from the evidence that many of the church's
28 goals could be met with a smaller scale development. So again, we have a careful
29 application of the facts to the law. I think that the basic problem that we have here is that
30 while the Master Plan recommends PD-44 zoning for the site if compatibility can be
31 addressed--none of us knows exactly what was in the minds of the Council at the time
32 they approved this Master Plan, but I suggest to you that they were perhaps thinking that
33 the entire site would be redeveloped. And if you did take away the church and take away
34 the community building--and of course, no one is advocating that--but if you did, you
35 would have a whole lot more room on this site to put in PD-44 zoning at a much less
36 massive scale. This building would be much lower and spread out more. I think that's what
37 the Council may have had in mind. And one small piece of evidence of that--again, looking
38 back to the sector plan, on page 6, you see a perspective view of the Woodmont Triangle.
39 Now, this isn't--this is simply illustrative. It's not anything binding. But if you look at this site
40 on this perspective view, you see the church is gone. The church community building is
41 gone. The houses on Rugby are still there. And what is--what is in its place is a much
42 more modest sized apartment building, of the type that I've shown you a picture of in
43 Washington, DC, which, at least in my--in my land planner's mind, would be an



February 3, 2009

1 appropriate level of transition. So again, I conclude with the--with the same words that,
2 uh... that basically I began with from the Hearing Examiner's exemplary and thoroughly
3 detailed report-- too big, too cramped, too close to single-family housing. Thank you.
4

5 COUNCIL PRESIDENT ANDREWS:

6 Thank you. All right. And now Mr. Kaufman has five minutes...
7

8 STEVEN KAUFMAN:

9 I believe I have five minutes.
10

11 COUNCIL PRESIDENT ANDREWS:

12 Approximately. Five minutes for rebuttal. OK.
13

14 STEVEN KAUFMAN:

15 Well, the first thing I would address is the Hearing Examiner did conclude that the church--
16 that in her opinion, the church could accomplish its mission and its goals in a smaller
17 complex. With all due respect to the Hearing Examiner, I don't believe that she has the
18 expertise to make that determination. There was testimony from our applicants about the
19 need for these facilities and the extent of these facilities and the need for the resources
20 from this project. Interestingly enough, the perspective that Mr. Brown just showed you
21 actually indicates the project and its configuration on the site. This whole case boils down
22 to its impact on two houses--this Estreicher house right next door, which is one of Mr.
23 Brown's clients--which, by the way, is a very large house built absolutely to the max on his
24 property--and another house, the Walsh ????? house, over here. The original
25 development plan was only 8 feet or so away. Through many changes and efforts, that
26 has been removed to 28 feet. So you're really talking about the benefits of this entire
27 project, 73 years of history of serving in the community, versus the impact on two houses
28 which are in an urban area and which are there to enjoy the benefits of downtown
29 Bethesda. This is not a suburban neighborhood. There is a lot of traffic and a lot of
30 buildings. Mr. Brown is incorrect when he says that there are no taller buildings further
31 west and further north. All along Battery Lane, there are buildings with taller-- which are
32 taller and which are massive apartment buildings. Again, if you look at this exhibit, the
33 only thing here that isn't urban is this small group of houses along Rugby Road. The
34 Master Plan requires that this property ultimately, where all these houses are, also be
35 zoned PD-44, but we can see that may be a long time before that happens. But when the
36 market returns, this will be an excellent assemblage area, and I certainly believe that you'll
37 see someone here before you in a PD-44 application with buildings of the types that we
38 are talking about here today. The--I'd like to go back to the Planning Commission.
39 Remember, now, you have a dichotomy of recommendations here. You have three expert
40 groups. You have the technical staff, you have the unanimous Planning Board, and then
41 you have the Hearing Examiner, who did conduct a very extensive hearing, but I believe
42 that she was influenced strictly by this one issue--the proximity to these two houses-- and
43 did not give enough weight to what is really the main issue here, which is, what is the



February 3, 2009

1 public benefit? What is served by this? That is your prerogative. I want to read to you from
2 the--from a Montgomery County case, County Council for Montgomery County versus the
3 District Land Corporation. It's very clear what it says. "The motives or wisdom of a
4 legislature in passing rezoning based on what it deems is in the public interest are not
5 subject to judicial review as long as there is sufficient evidence and a rational basis to
6 support the decision in the record and they have not acted arbitrarily and capriciously."
7 You determine what is the paramount public interest--not the Hearing Examiner, not the
8 Planning Board, not the technical staff. You determine that, and that is not subject to
9 judicial review. As long as there is sufficient evidence--believe me, there is sufficient
10 evidence in this record to support this rezoning. There is very strong evidence of what is
11 the paramount public interest. And that, I believe, is much more important than the impact
12 on two houses, or even a group of houses in close proximity, which ultimately will be
13 replaced. Thank you.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Thank you. All right. Good timing. All right. We're now going to go to my colleagues'
17 questions and comments, and I'll start with Council Vice President Berliner, then
18 Councilmember Leventhal, then Councilmember Knapp, and then Councilmember Elrich,

19
20 COUNCIL VICE PRESIDENT BERLINER:

21 One, let me compliment counsel from both sides. I was among those that urged my
22 colleagues to accept oral argument with respect to this matter, and I believe we are well
23 served by having oral argument with respect to these matters. They're complicated,
24 they're important, and it's important for us to hear all points of view with respect to this. Let
25 me ask what I perceive to be one of the linchpins, the fundamental legal issues, in this
26 case. And I will ask counsel first, if I could. There is a difference of view as to whether or
27 not we are in a position to defer to the Planning Board until site planned the question of
28 compatibility or whether or not this Council has a "fundamental obligation," I believe was
29 the phrase of the Hearing Examiner, with respect to our making such a finding. I would
30 like ask our counsel whether or not you believe that it is true that we, this body, must find
31 compatibility, as opposed to deferring that issue to the Planning Board.

32
33 JEFF ZYONTZ:

34 You must find compatibility as a requirement of the PD-44 zone itself. Now, exactly what
35 compatibility means is, you have discretion on determining what compatibility is.

36
37 COUNCIL VICE PRESIDENT BERLINER:

38 So we must make a judgment whether or not this is compatible. We must make a
39 judgment whether or not this is consistent with the sector plan. Is that correct?

40
41 JEFF ZYONTZ:

42 Yes.



February 3, 2009

1 COUNCIL VICE PRESIDENT BERLINER:

2 And then we must also make a judgment with respect to the public interest.

3
4 JEFF ZYONTZ:

5 Yes. They're separate.

6
7 COUNCIL VICE PRESIDENT BERLINER:

8 Now let's--let me speak--let me ask that question, and I'd like to ask the Hearing
9 Examiner, if I could, and if it's inappropriate to ask you with respect to this matter, you
10 please defer me--point me someplace else. Another one of the legal issues here is the
11 extent to which the public interest overrides the other considerations or influences the
12 other considerations. Much has been made with respect to the incredible good work that
13 is done by this church and that the public interest is served by supporting the church in its
14 expansion because of the good work that it does. As a matter of law, is that an
15 independent variable, or does it somehow trump or influence the other findings that we
16 must make, or do we need to make, in this instance, a finding of compatibility, do we need
17 to make a finding with respect to consistency with the sector plan, and make an
18 independent judgment with respect to the public interest? And if we were not able to make
19 a judgment with respect to the first two, do we even reach the third?

20
21 FRANCOISE CARRIER:

22 In my view, if you don't find-- if you can't find compatibility and consistency with the zone--
23 requirements of the zone and substantial compliance with the Master Plan, you don't
24 reach the public interest issue. The public interest element is, as Mr. Kaufman stated, is
25 part of the--the fundamental basis for zoning authority is the health, welfare, and safety of
26 the people in the regional district area. So that sort of underlies all of the decisions you
27 make in zoning cases, and it is certainly--in case law, it figures prominently in zoning
28 decisions. In my view, because of the way our zoning ordinance is set up, particularly in a
29 case like this, which requires a development plan, you have to make five findings before
30 you can approve a zoning--a rezoning. And those findings include compatibility and
31 substantial compliance with the use and density recommended in the Master Plan. So in
32 my view, you don't get to the sort of underlying public-interest issue if you can't make
33 those findings. I will say, though, that I think there may be some room for interpretation on
34 that issue. I have not read-- recently, at least. I've certainly read ????? Beale, but not
35 recently, and I haven't read the district land company case. I'm not sure--if I have, it was a
36 while ago. I don't know if there--if the courts would actually support a decision by a zoning
37 authority that says, this is not compatible and it doesn't satisfy our sector plan, it does not
38 substantially conform to the sector plan, but we think there are overriding public interest
39 concerns. I guess I would ask Mr. Royalty if he has any view on that. I'm sorry to put you
40 on the spot, but...

41
42 CLIFFORD ROYALTY:

43 We're all family here.



February 3, 2009

FRANCOISE CARRIER:

You know, I don't know--

CLIFFORD ROYALTY:

I don't even have the zoning ordinance in front of me, but I think I agree with your answer, but I'd have to look to the language exactly. Public interest isn't a separate and distinct criteria, if memory serves.

FRANCOISE CARRIER:

No, it's--the zoning ordinance does not require a public interest finding. The public interest component comes from the Regional District Act and case law. So there's a sort of interaction among them. You wouldn't want to--I wouldn't recommend granting a rezoning that was not in the public interest just because it was compatible with the surroundings, although it's hard to imagine that scenario. But I similarly don't recommend, as you know, finding that the public interest can trump the fundamental findings you have to make in the zoning ordinance.

COUNCIL VICE PRESIDENT BERLINER:

With respect to the characterization Mr. Kaufman has made that, in assessing compatibility, you focused on two houses, would you care to address that characterization?

FRANCOISE CARRIER:

Well, you know, the--I put in specific numbers about the distance from the closest houses because they are the worst case, the worst examples of the proximity of the proposed structure to houses. It is, in my view, not just the houses that are right up against the building. There's that whole little residential enclave, which is about 20 houses, and there's also the houses on the other side of Old Georgetown Road. The Battery Park neighborhood is a large neighborhood of single-family homes that, from those pictures I've seen, appear to be roughly similar to the Rugby and Glenbrook homes in their sort of character or their size, from what I've seen in the photographs. And it--I found persuasive the testimony suggesting that those homes would also be impacted by the size of this development, which would bring out all the way to the edge of the CBD the sort of building mass and size and density that is--that we believe belongs in the CBD, but not along--right along the edge next to the residential neighborhoods. You know, the sector plans calls for building heights to go down as you get to the edge. And there are, it's true, some tall buildings along Battery Lane, but some of those buildings, while they are large, are not tall, and so they don't loom over other structures. A couple of them are tall, and there is that one tall building right across the street from this. As I said in my report, I --you know, that building doesn't belong there. I don't find it to be a reason. It's not --it doesn't--it doesn't fit. It's not consistent with the current zoning standards. I don't find that a persuasive reason to allow another really big building to be built right across the street.



February 3, 2009

1
2 COUNCIL VICE PRESIDENT BERLINER:

3 You also apparently made a determination or made some findings that, in your view, to
4 the extent to which we do care about the "public interest" as it has been defined in this
5 proceeding--that is, seeking to assist the church in its good works--you made some
6 findings that the church could achieve those objectives with a smaller development. That
7 finding-- that statement has been challenged by counsel here today, that you are ill-
8 equipped to make such a determination. Would you care to share with us the basis upon
9 which you arrived at such a determination?

10
11 FRANCOISE CARRIER:

12 Yeah. It was in part the testimony of the opposition land planner, William Doggett, who
13 testified that in his view, you could have a residential building and a community building
14 and the church if you made them all smaller. And the evidence suggested that one of the
15 driving factors behind the size of the community building, for instance, was the desire for a
16 basketball court that would satisfy particular standards-- I think it was junior varsity league,
17 something to that effect. And the vast majority of the communication that we received
18 about the church's good works did not have to do with a basketball league. It had to do
19 with services to the poor, essentially, to the low-income community, immigrant community.
20 It seemed to me that there were --you know, one of the driving forces here was that
21 basketball court. If there were any flexibility about that, that could change the size of that
22 building. That was one thing that popped out at me from the evidence. So I guess I would
23 say it was those two factors. It's certainly true that I don't have specific evidence about the
24 financial situation here, but it was, you know, something I felt that I should add, that it
25 appeared, from the evidence, that they could get most of their goals--perhaps not all, but
26 many of their goals could be satisfied with smaller buildings.

27
28 COUNCIL VICE PRESIDENT BERLINER:

29 Mr. Kaufman, you're obviously familiar with the Woodmont Triangle Amendment to the
30 sector plan for the Bethesda CBD.

31
32 STEVEN KAUFMAN:

33 I am, yes.

34
35 COUNCIL VICE PRESIDENT BERLINER:

36 And you're familiar with the exhibit that was introduced on page 23 and the language with
37 respect to that exhibit?

38
39 STEVEN KAUFMAN:

40 Yes.

41
42 COUNCIL VICE PRESIDENT BERLINER:



February 3, 2009

1 So, let me hear you, if you will, rebut the implication that Mr. Brown draws from the
2 sentences at the bottom of page 23 that read "at the time of rezoning"--and I assume we
3 are at the time of rezoning. That is where we are now.

4
5 STEVEN KAUFMAN:
6 Right.

7
8 COUNCIL VICE PRESIDENT BERLINER:

9 "At the time of rezoning, any application should be reviewed to determine compatibility
10 with existing single-family homes both north and south of Old Georgetown Road. In
11 addition, the rezoning should not be allowed to result in multi-family development
12 surrounding or isolating a limited number of single family homes." I need to understand
13 from you how it is that that explicit language is consistent with your interpretation that this
14 is not inconsistent with this language.

15
16 STEVEN KAUFMAN:

17 First, thank you for the opportunity to address the question. First, I would point out, as I
18 did in my closing statement, there's very strong evidence in this record of compatibility by
19 not only the witnesses for the applicant, our land planner, but by the technical staff and by
20 the Planning Board both. So you have sufficient evidence to find compatibility. It isn't like
21 there is nothing in the record to do that. I would also point out to you that on page 29 of
22 the record, the Hearing Examiner says, "The subject site was part of block 19, the only
23 block for which the plan did not include a building height recommendation." So there is no
24 recommendation for block 19. Secondly, the zone, PD-44, has no height limit in it. So the
25 Council obviously knew that the PD-44 zone development standards allowed you to
26 establish your height through zoning and at site plan. So there's plenty of evidence in this
27 record. It's contrary to what your Hearing Examiner has recommended to you, but up until
28 the time of the Hearing Examiner's report, all the recommendations of your technical
29 experts have been that there is compatibility.

30
31 COUNCIL VICE PRESIDENT BERLINER:

32 So when you look at this--I don't mean to cut you off. I am interested in your statement
33 that you believe that your proposal comports with the requirement in the sector plan that
34 we find compatibility with existing single-family homes both north and south.

35
36 STEVEN KAUFMAN:

37 There is evidence to that effect in the record.

38
39 COUNCIL VICE PRESIDENT BERLINER:

40 And is that your advocacy here today, that that is true--that it is compatible with the single-
41 family homes that we see here today?

42
43 STEVEN KAUFMAN:



February 3, 2009

1 Yes. The hearing Examiner said, this is subject to interpretation. You have different
2 experts who have interpreted differently. Obviously, the experts for the two parties are
3 going to be where the parties want to be. Then you have three other groups of experts.
4 You have the technical staff, which looks at these zoning requirements all the time--the
5 technical staff which, by the way, drafted the Master Plan which you approved and which
6 the Planning Board sent to you. And it's very clear to me, and there are members of this
7 Council who were there when this Master Plan was adopted, that this particular PD-44
8 paid a whole lot of attention to this site for the very reason that we are here today, which
9 was the survival and continuation of this very wonderful church and its good works in this
10 location.

11
12 COUNCIL VICE PRESIDENT BERLINER:

13 Let me stop you there if I could, then.

14
15 STEVEN KAUFMAN:

16 OK.

17
18 COUNCIL VICE PRESIDENT BERLINER:

19 Let me turn to the Hearing Examiner because you've made-- on a number of occasions,
20 you have alluded to the fact that you believe that the Hearing Examiner inappropriately
21 diminished the findings of the Planning Board and the technical staff with respect to that.
22 Would you care to respond to those arguments as to why we-- we're in a situation now
23 where clearly there have been two different points of view expressed. There's been the
24 Planning Board--there's been the technical staff and the Planning Board, and then there's
25 your recommendation with respect to that. That puts us in a bit of a bind in terms of, you
26 know, we often pay deference to our Planning Board, we often pay deference to our
27 Hearing Examiner, who looks at the record, so now we need to figure out where we pay
28 deference. Tell us how you--what deference, if any, you paid, and why--if you didn't, why
29 you didn't.

30
31 FRANCOISE CARRIER:

32 I appreciate that it puts the Council in a difficult position to have mixed recommendations.
33 And also--I also feel uncomfortable on some level going counter to the recommendations
34 of the Planning Board and its staff. They are professional planners--at least the staff is
35 professional planners. But I also feel strongly that if it was supposed to be a rubber stamp
36 of the Planning Board and its staff, we wouldn't bother having these big hearings. You
37 know, we just wouldn't bother with this. If all you wanted was for me to follow their
38 recommendation, you wouldn't have me do these big hearings. So I feel like it is my duty
39 to look at their rec-- the staff report, the Planning Board recommendation, the testimony,
40 the written evidence, in this case, we have physical evidence, and really make my best
41 judgment as to which is the most persuasive. I'm looking at the preponderance of the
42 evidence, I'm weighing the evidence on both sides, and in my view, I did not find the
43 technical staff report very persuasive. Their arguments for compatibility were essentially



February 3, 2009

1 that these little houses are going get knocked down and redeveloped, so we shouldn't
2 worry about them very much. And I didn't find that persuasive. Some people might. And
3 I'm sure that they meant it in good faith, that they felt it was not--you know, sort of, as Mr.
4 Kaufman argued, you know, why worry about these two little houses when you have this
5 important project? You know, in my view, the little houses are there, and there are people
6 who live in them.

7
8 STEVEN KAUFMAN:

9 They're not little.

10
11 FRANCOISE CARRIER:

12 The--well, they're little relatively speaking.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Be careful here. I would be careful.

16
17 FRANCOISE CARRIER:

18 And... And I was also very much influenced by the language of the sector plan. It was
19 unusually specific language. I have read a lot of Master Plan language, and I don't often
20 see a direction that at zoning, you have to make sure it's compatible, and I found that to
21 be very powerful language-- that when they drafted the sector plan, it was only 18 months
22 ago--I guess it's coming up on two years. It was March of '06. It's only two years ago that
23 there was a big process, and the decision was, this could go with PD-44, but you have to
24 make sure it's compatible with these, the houses that are there on both sides of Old
25 Georgetown Road. The little neighborhood on Rugby and Glenbrook may not be there
26 forever. Houses in Battery Park, I'd be surprised--you know, that's just a long-standing
27 large neighborhood. There's nobody suggesting that's going to go away. So there's--there
28 are--you know, there's that consideration on both sides of Old Georgetown Avenue--Old
29 Georgetown Road. And as for, you know, not deferring or not giving as much weight as I
30 usually do to the Planning Board recommendation, it was not a very clear
31 recommendation. There was language suggesting that they thought there were
32 unaddressed compatibility concerns, you know? As I said in my report, I'm sure the
33 Planning Board has the ability to deal with compatibility issues. They do it at site plan all
34 the time. As the way--the way the zoning ordinance is currently written, it's simply --I
35 believe the Council simply can't delegate that to the Planning Board. You don't have the
36 choice to let them sort it out at site plan. If it's not compatible now, they don't get the
37 rezoning now. That was my view.

38
39 COUNCIL VICE PRESIDENT BERLINER:

40 Thank you. Council President, let me just--one final observation, and Mr. Kaufman, if you
41 care to respond to it, you're welcome to. I must say to you, I find unpersuasive your
42 argument that this is an "urban" area, that these homes live in an "urban" area and
43 therefore, somehow the definition of compatibility is--should be stretched to assume that



February 3, 2009

1 they live in the midst of an urban area and having this size building next to them, dwarfing
2 their houses, is something that they bought into by choosing to live in an urban area. If I
3 made a major investment in my home, looking at the church at it exists today, I promise
4 you I would not have made that investment had I foreseen that something of this
5 magnitude was going to be looming over it. So I get that we--it is on the edge. I get that
6 we have a vibrant urban core in Bethesda, but somehow the notion that these people, if
7 you will, deserve this fate because they live in an urban area, I'm not with you on that.

8
9 STEVEN KAUFMAN:

10 May I comment?

11
12 COUNCIL VICE PRESIDENT BERLINER:

13 You may.

14
15 STEVEN KAUFMAN:

16 First of all, I'm not suggesting that anybody deserves any fate. That's not for me to
17 determine or to interpret. I will say, for example, that this house right here--Mr. Estreicher's
18 house --was built after this application was filed. So there was very ample opportunity for
19 him to know what was coming. The other house is a long-existing house, but in that area,
20 much has been done to address the proximity. As I said, it went from eight feet to 28 feet.
21 Also, the first two floors of the building have a fenestration and a setback, so that there is
22 a scale of compatibility. The-- you know, much is made of the chairman's statement about
23 changes that could be made at site plan. And I must say, there are some things that can
24 still be done. I don't know if they're very, very significant, as the Hearing Examiner has
25 said, but there are some things that could be done. So I would suggest that if the Council
26 is not prepared to approve this morning, that potentially there be a remand for additional
27 testimony. But that could also be done at site plan. That's what the PD-44 is about. You
28 come with a project plan which must go through site plan amendment, and although the
29 chairman did say that they could address that further at site plan, it doesn't detract from
30 the absolute unanimous finding of all the members of the Planning Board that this project
31 is compatible. You know, this is a very subjective thing. As I said before--well, one other
32 point I would make. The Master Plan calls for the entire area to be ultimately rezoned PD-
33 44. The fact that it's a floating zone is primarily the reason you did not comprehensively
34 rezone the area, because you need a specific project plan or development plan with it. But
35 had it been the Euclidean zone, I believe the Council would have comprehensively
36 rezoned this area, like it does with all Master Plans. You often rezone areas that are
37 single-family houses to a higher intensity, and it's very clear that this Master Plan intended
38 that this area should be a higher intensity. And this is an urban area. It may have smaller
39 homes on it, but--if I could find my other exhibit--this one. This speaks volumes. It speaks
40 volumes. So, I hate to say this, but it really comes down to, you're the decisionmakers.
41 What is the paramount interest for this community? What serves the community best?
42 And I--with all due respect, if you're talking about zoning, it all stems from what is the



February 3, 2009

1 public good. All the rest of it is just chatter. It's just chatter. It all comes down to what is the
2 public good. Thank you.

3
4 COUNCIL VICE PRESIDENT BERLINER:

5 Council President, consistent with the remarks of counsel, I do have a draft order on
6 remand before my colleagues. We have a choice now to either approve this, obviously, to
7 reject it, which would then, as I appreciate it--and, counsel, you may want to advise me
8 with respect to this--if we reject this, they can't come back for three years, and when they
9 do come back, they'd have to file new fees associated with it.

10
11 JEFF ZYONTZ:

12 Yes. New application.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 I personally believe that it is possible to achieve the public interest consistent with
16 compatibility goals and the Master Plan, and want to give you and your client an
17 opportunity to do that, because I believe that your client does incredibly good work and
18 deserves another crack at coming up with something that can work. So that is my motion,
19 and I'd be delighted to have a second.

20
21 COUNCILMEMBER ERVIN:

22 Second.

23
24 COUNCIL PRESIDENT ANDREWS:

25 All right. Seconded by--it's made by Vice President Berliner, seconded by Councilmember
26 Ervin. Councilmember Leventhal, you're next.

27
28 COUNCILMEMBER LEVENTHAL:

29 OK, let me ask the proponent, do you dispute that this 3-D model is an accurate
30 representation of your client's plans?

31
32 STEVEN KAUFMAN:

33 Yes, in many ways, it is. Well, is it to scale? It probably is. But it does a lot of things to
34 show you absolute worst potential result. For example, they show you the little houses
35 across the street, more than 200 feet away from the subject property on Old Georgetown
36 Road, but they do not show you the 11-story building right across the street.

37
38 COUNCILMEMBER LEVENTHAL:

39 OK. But solely with respect to the structures in the model--

40
41 STEVEN KAUFMAN:

42 Well, they also have the model here--they have both models. They have the original
43 model, which shows you the absolute closest point to the adjacent homes.



February 3, 2009

1
2 FRANCOISE CARRIER:

3 But that's not on display. That's over in a corner.
4

5 STEVEN KAUFMAN:

6 All right. Well, I can't see the whole model.
7

8 FRANCOISE CARRIER:

9 The original one is over in a corner of the room, in case Mr. Brown decided to use it.
10

11 STEVEN KAUFMAN:

12 OK. Fine. I'm sorry about that. I thought it was on the table. But what you see shows you
13 the few houses to the rear, but it doesn't show you the potential--
14

15 COUNCILMEMBER LEVENTHAL:

16 It doesn't show you the layout of all of the whole Woodmont Triangle, but with respect to
17 what is included--
18

19 STEVEN KAUFMAN:

20 It doesn't really show you the most immediate neighborhood, which has some very large
21 structures in it.
22

23 COUNCILMEMBER LEVENTHAL:

24 All right. Point taken. I got it. But with respect to the structures that are there, is it an
25 accurate representation of those structures and what it's likely to be applied once built?
26

27 STEVEN KAUFMAN:

28 Well, honestly, I didn't measure them, but I assume that counsel and their modelmaker did
29 try to make it to scale.
30

31 COUNCILMEMBER LEVENTHAL:

32 It does resemble the drawing that you showed us.
33

34 STEVEN KAUFMAN:

35 Yes. So, you know, I'm not objecting--I didn't object to it on those grounds. I objected to it
36 on the grounds of the things that were left out.
37

38 COUNCILMEMBER LEVENTHAL:

39 Yeah. I want to make just a couple of quick observations. It seems to me... Someone I
40 respect a lot recently said that serving on the County Council is not rocket science. This is
41 about as complex a set of judgments as we have to make.
42

43 STEVEN KAUFMAN:



February 3, 2009

It is.

COUNCILMEMBER LEVENTHAL:

And, you know, I like, modestly, to think that I am better at this job each year, but I do think it takes some time to be able to make judgments that I have confidence in, particularly on these zoning and land use matters. And so I'm bringing to this my own subjective judgment, my own sense of what Bethesda used to look like, ought to look like, will look like in the future. I know the area very, very well. And I have the highest regard for the opinion of Ms. Carrier, who I don't always vote with but whose judgments on these matters and the balancing act that she's done here I always take very seriously. So her opinion always carries a great deal of weight with me, whether or not I end up voting precisely the way her recommendation is. At the same time, like all my colleagues, I think that this is an extraordinarily important church that provides extraordinarily important service to Bethesda and to the entire county and that will continue to do so and that ought to have the right to utilize its property in a manner that's consistent with its mission and its vision. And I understand that in a case like this, it will enter into a partnership with a private developer in order to maximize its ability to perform its own mission. So there's much about what the church proposes to do that is attractive to me, and I'm very cognizant of the services that it provides. Reaching back to the conversation we had earlier, I don't know whether opposing counsel advised their clients to be here in the audience wearing badges to show which side of this argument they're on. Doing that takes it out of the realm of the merit and into the realm of, OK, we're elected officials. Can we count noses? Do we recognize people in the audience? Do we understand that these are our voters? Yes. I mean, we know all those things, but those are not issues that decisionmakers on District Council ought to be considering right now, and yet, you're all in the audience, and so we understand there's people who love and support the church, and there's people who live in the neighborhood and you're our constituents. That has--that is irrelevant. That is not germane to the vote we're about to cast. However many people are on either side of the argument, however many voters are on either side of the argument, is not germane. This is not supposed to be a political decision, and I just wanted to make that point. So reaching back to our earlier conversation about the advice I would give the respective members of the Land Use Bar, advising your clients to show up in a demonstration of support when we have oral argument would make me less inclined to grant oral argument in the future, because what oral argument is not is a public hearing. The hearing is conducted before the Hearing Examiner. Oral argument is an opportunity to elaborate on the technical details in the hearing record, and that's all it is. It's not a show of political support. It's not a show of which side has more people or which side has more voters. So I'm disregarding the information which is outside the hearing record, which is all of my constituents, who I respect and appreciate, who are present in the audience. This is a public proceeding. You're entitled to participate. But that piece of information about how many badges you all are wearing and how many of each of you are on which side is outside the hearing record, and I am disregarding it. I'm going to support Mr. Berliner's motion. It seems to me that Mr. Berliner has appropriately found a



February 3, 2009

1 compromise position which does not deny the church the ability to utilize its land, which
2 does not prevent the church from moving ahead with its mission and its vision, but which
3 says to the Planning Board, let's take another look at this. Let's see if we can do this in a
4 manner that is consistent with the objections that the Hearing Examiner has pointed out
5 and that recognizes that Bethesda is an area in between. It is an R-60 zone. Yes, the
6 Master Plan says it may at some point be redeveloped to the PD-44 zone, but I was here
7 during the discussion of the Woodmont Sector plan, and I remember quite vividly that the
8 owners of the buildings along Battery Lane had some--

9
10 FRANCOISE CARRIER:

11 OK. If you're going to be giving us information that's outside the record, I'd have to advise
12 you not to.

13
14 COUNCILMEMBER LEVENTHAL:

15 I can't speak to anything that's outside the record myself when I'm weighing my own vote?

16
17 FRANCOISE CARRIER:

18 No.

19
20 COUNCILMEMBER LEVENTHAL:

21 Well, there we go. Then that's outside the record. Thank you. All right. I thank counsel.

22
23 COUNCIL PRESIDENT ANDREWS:

24 You have no prior knowledge.

25
26 COUNCILMEMBER LEVENTHAL:

27 I have no prior knowledge of what's in the sector plan that I voted for which we're using--

28
29 COUNCILMEMBER KNAPP:

30 ????? That you can share.

31
32 COUNCILMEMBER LEVENTHAL:

33 Which we're using as a basis for this vote.

34
35 COUNCILMEMBER KNAPP:

36 ????? That's right.

37
38 COUNCILMEMBER LEVENTHAL:

39 OK. Well, see, we all need to be reminded of how this process works. But it's not rocket
40 science. OK. So, look, I think what Mr. Berliner is proposing is fair to the applicant. It
41 keeps them alive. It keeps the applicant's proposal alive. It sends a signal--Mr. Berliner's
42 motion sends a signal to Planning Board that we want to try this one more time and give
43 the applicant one more crack at crafting something that achieves these two different policy



February 3, 2009

objectives of not imposing unduly on the existing houses in an existing R-60 zone while still giving--not denying the church the opportunity to realize its mission and its vision.

COUNCIL PRESIDENT ANDREWS:

Thank you, Councilmember Leventhal. Councilmember Knapp?

COUNCILMEMBER KNAPP:

Thank you, Mr. President. Just a couple of questions. We've had a couple of decisions we've had to make as it relates to various zoning cases in the past, some of which actually have longer-term ramifications because they establish certain precedents. By approving, denying, are we establishing any particular precedent here, or are we just addressing the case in front of us?

JEFF ZYONTZ:

Just the case in front of us.

COUNCILMEMBER KNAPP:

OK. Just good to know. We've had a couple of cases where that wasn't necessarily true. What is the height of the building, as Mr. Kaufman pointed out, that's kind of right across the street, relative to the proposal?

FRANCOISE CARRIER:

You know, I guess I don't know its height in feet. I know it's 11 stories. It's an older building, so that suggests about 10 feet a story. Modern buildings are a little more than 10 feet per story. So put it at somewhere around 110, and the proposed building is 114.

COUNCILMEMBER KNAPP:

OK. So comparable.

FRANCOISE CARRIER:

Yes.

COUNCILMEMBER KNAPP:

OK. In this proposal, where is parking?

FRANCOISE CARRIER:

Underground.

COUNCILMEMBER KNAPP:

OK. So underground from which--

FRANCOISE CARRIER:



February 3, 2009

1 You come in--you enter two ways. Off of Old Georgetown Road, there's a garage
2 entrance, a driveway there, and then on the other side of the building, where you may be
3 able--it may not be drawn on there, because when they did the second model, they didn't
4 have pictures with the windows and stuff.

6 JEFF ZYONTZ:

7 It's right about here.

9 FRANCOISE CARRIER:

10 But there's another garage entrance right next to the Estreicher home--

12 COUNCILMEMBER KNAPP:

13 That goes underneath the gym?

15 FRANCOISE CARRIER:

16 Goes underneath the gym. Yes. And that parking garage would serve all the various users
17 of the church and the gym, the community center and the residential.

19 COUNCILMEMBER KNAPP:

20 Um... Um... I must confess, I struggle with this one because this is the conversation we're
21 going to have to have a lot going forward. This is... As we continue to--the argument is
22 made that Bethesda is an urban community, therefore we should do certain things. It is.
23 The challenge that we are going have, though, I think, is, as we transform from a much
24 more suburban community to a more urban community, how are those steps taken? And I
25 think is a perfect example of what it is that we're going to have to confront. You know, as
26 we look at the element of compatibility, part of me struggles. If you come down the front, I
27 think it actually--it's fairly compatible. If I look at it from this angle, which I've been looking
28 at for the last hour and a half, it looks somewhat less so. And yet, we're going to have this
29 discussion kind of throughout because there's always going to be this transitional element.
30 I think that actually... My personal preference, I think, would be to find for compatibility and
31 have it addressed at site plan. However, I think the notion of a remand gets us to roughly
32 the same point, and I think the good part about a remand is it allows us--because I think
33 this is a conversation both neighborhoods and property owners are going to have to have,
34 is how do we get the recognition that it's going to be more dense, it's going to be more
35 urban, but figure out a way to do that in a way--not that's painless, but in a way that
36 recognizes, kind of, each of those sets of concerns, because this isn't going to happen
37 once. This is going to happen a hundred times. This is going to happen a thousand times
38 over the course of the next 10 to 15 years, because that's what our County is going to be
39 addressing. And so I think, at least at the front edge of this discussion, I think we're all just
40 kind of coming to the recognition of this--the realities that this is going to be what our
41 dialogue is going to be. It behooves us to take it a little more slowly than perhaps I would
42 like and to try to get the parties to continue to focus on the best way to get there from
43 here. Again, not recognizing the best way is going to make everybody happy, but that the



February 3, 2009

1 best way is going to be to try to get the right amount of transition so we get the right
2 amount of density in our parts of our county that should be dense, recognizing that
3 immediately adjacent or somewhat nearby are going to continue to be residential
4 neighborhoods, and somehow we're going to have to create a dynamic that allows them to
5 peacefully coexist. So, since we're going to get to see this again, I've got more questions
6 and thoughts, but I think that I will support the motion in front of us to remand and urge
7 people to do it fairly expeditiously, if at all possible. But that this is something we're going
8 to have to figure out how to do and do well, so I prefer to have people take the time and
9 try and get it right. So I thank both counsel for their perspective, and I very much
10 appreciate the perspective brought by the Hearing Examiner and hope that we can use
11 this as a model of how we're going to try and proceed with these points going forward.
12 Thank you.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Thank you, Councilmember Knapp. Councilmember Elrich?

16
17 COUNCILMEMBER ELRICH:

18 I'm going to support Roger's motion to remand, but if I had a vote on this, I'd vote to find
19 this incompatible with the sector plan as it is presented today, and I don't know how to find
20 this project compatible at all. We--a couple of weeks ago, maybe a month ago, I voted
21 against the recommendation that Francoise made on another issue, and in that issue, we
22 were told that we were dealing with an old sector plan that was subject to interpretation,
23 and what was recommended 20 years ago may not be what we want to do now, and, you
24 know, so we're looking at this with new eyes, and who knows where it would go, and I
25 didn't agree with that because I thought that there was adequate room under the old
26 sector plan to do something reasonable, but I lost that vote. But this is not an old sector
27 plan. This thing was revived--was revised in March of 2006. And they went block by block,
28 and they massively created opportunities for new development inside the Woodmont
29 Triangle. So this can't be viewed as a mistake or an outlier. There is a deliberate plan in
30 here to say this is going to be--could be PD-44. And I guess where I differ with Mike is, the
31 way I read this is that before you decide to rezone it, you should find compatibility. And if
32 you just give it to Park and Planning and say, OK, we're going to--you know, we're going
33 to rezone it to PD-44, then we've automatically found this compatible. Certainly Steve is a
34 clever lawyer. He's certainly going to argue that, you know, we decided that this was
35 compatible at the moment we--

36
37 STEVEN KAUFMAN:

38 Didn't convince you, so I don't know how clever.

39
40 COUNCILMEMBER ELRICH:

41 Well... That still doesn't mean you're not a formidable lawyer, but you didn't convince me.

42
43 STEVEN KAUFMAN:



February 3, 2009

1 Thank you. I take that as...

2
3 COUNCILMEMBER ELRICH:

4 But I do think that the fact is that, you know, if we make this finding now, we are creating a
5 problem for ourselves. I don't think it's fair to say that the person who built the new house
6 knew it was coming, because in fact, this is a process, and you could lose, and nothing
7 could be coming. You know? I would hope that it's not a foregone conclusion that you file
8 any plan with any density anywhere, and the mere fact that you file means it's coming. It
9 just means that you've begun the process of moving forward, and the decision may or
10 may not end up where you want it to end up. At least that's the way I interpret the filing of
11 things. I'm concerned about some of this, and I hope the Council listens to some of this
12 discussion here as we go forward with some other decisions, because we've talked a lot
13 about the tenting effect. We just had a long discussion with Twinbrook about, you know,
14 we want the edges to be more compatible with the residential neighborhoods, the height
15 should come down, all that kind of stuff. And we've had Park and Planning say, don't put
16 any height limits in the Master Plans--trust us. You know, we'll make sure it's tented. And
17 then I'm looking at this, and I don't see any tenting. And I see, as somebody pointed out,
18 the densities and the heights of the CBD brought to the edge of the CBD, not
19 concentrated in the center of the CBD. So all of this makes me want more specific
20 language in the other things we do so we don't get into the situation where somebody can
21 say, "You don't have a height recommendation. Who knows what tenting means? This is
22 perfectly fine." So I hope the Council takes this as somewhat of a warning as to where we
23 go in the future on this, because I think this argues for more detail and more specificity
24 and more consideration on our part, rather than less consideration. I want to say
25 something also about the role of the Hearing Examiner in this process and why we should
26 give more weight to the Hearing Examiner than the Planning Board process. And with all
27 due respect to my Planning Board friends in the back of the room, some of whom have
28 been civic activists and experienced the Planning Board from the non-Planning Board
29 side, it is not the most open process for give-and-take discussion. It's a world of three
30 minutes of comments and lining up your witnesses, and it's not at all like the process that
31 they go through in the Hearing Examiner's office, where I hear about people saying,
32 "We're in the second week of our discussions--with the community and with the applicant."
33 So I put a lot of weight on what the Hearing Examiner says because I view her process as
34 more thorough and more likely to engage all elements of the community than the Planning
35 Board process. Again, all due respect to the Planning Board, this process is more, I think,
36 sensitive to the community. And I guess my last comment is that, as I recall, Mr. Zyontz,
37 the PD zone is--was originally meant to be a rural zone that we've popped in to be a
38 floating zone because we don't have--

39
40 JEFF ZYONTZ:

41 Certainly PD-44 is not a rural zone.

42
43 COUNCILMEMBER ELRICH:



February 3, 2009

No, but the PD...

JEFF ZYONTZ:

PD...

COUNCILMEMBER ELRICH:

There was some discussion about whether this is appropriate zone for these transition areas.

JEFF ZYONTZ:

I mean, we have talked, in the past, of whether there should be a different infill zone.

COUNCILMEMBER ELRICH:

Yes, and I think that this is a good case for a different infill zone. I think that we need to give something that has more specificity so people know what it is they're dealing with, and I don't think the PD zone is a good zone to be doing with it-- doing this with. And I thought --my understanding was that eventually they would be gone and replaced by an infill zone.

JEFF ZYONTZ:

We're still waiting for the zoning ordinance rewrite.

COUNCILMEMBER ELRICH:

I think all of us are waiting for the zoning ordinance rewrite. Anyway, I mean, I will support the remand. I don't think this is going to be fixed by a different window here and a different window there. I think that the compatibility issue is serious. The Council routinely zones things at lower heights. People make profits at buildings at lower heights all over the county. The logic of our tenting discussion, to the extent that we believed in it, was that people would build shorter buildings on the edges of existing residential neighborhoods and make money. It happens all the time, and I don't see why it can't happen here. So, thank you, Roger, for the alternative.

COUNCIL PRESIDENT ANDREWS:

OK. Thank you, Councilmember Elrich. Councilmember Floreen.

COUNCILMEMBER FLOREEN:

Thank you. I've got a couple of questions. Here's a little detail for the Hearing Examiner. You said in your proposed order from us that there was a concern with the specimen trees on the site. And I actually read your --well, a lot of your report, and the Planning Board staff said there were no specimen trees.

FRANCOISE CARRIER:

I don't believe that that's--



February 3, 2009

1
2 COUNCILMEMBER FLOREEN:

3 Page 202 of the packet.

4
5 FRANCOISE CARRIER:

6 No, I don't have that part.

7
8 COUNCILMEMBER FLOREEN:

9 So I just am a little worried about tossing around terms unless we really technically mean
10 them. That's in the NRI. ????? Conservation.

11
12 FRANCOISE CARRIER:

13 Well, you know, this document does--let's see. This is the... What document is this?

14
15 COUNCILMEMBER FLOREEN:

16 It looks it's the memorandum from the development and review staff to the Planning
17 Board.

18
19 STEVEN KAUFMAN:

20 The NRI ????? is the engineers' --what's actually on the site, all the physical
21 characteristics.

22
23 FRANCOISE CARRIER:

24 Well, you know, it's possible-- it appears that I made a mistake in saying that there were
25 specimen trees. It was my recollection that there were six or seven specimen trees.

26
27 COUNCILMEMBER FLOREEN:

28 OK. So just wanted to straighten that one up. I'm interested in the comment that came up--
29 --and I don't know what was in the record with respect to the Estreicher--it's the Estreicher
30 house?

31
32 FRANCOISE CARRIER:

33 Estreicher. Yes.

34
35 COUNCILMEMBER FLOREEN:

36 We've been sitting here looking at this for the past hour and half, two hours. Is it true that
37 that was constructed after this case was filed? Can you tell us what you know about that?

38
39 FRANCOISE CARRIER:

40 My recollection is that it was --I don't know if the construction was begun before the case
41 was filed. My--what came out of the hearing process is that Mr. Estreicher bought the
42 home from a builder. Whatever notification went out at the beginning of the case-- the



February 3, 2009

1 notice of hearing and so forth--would have gone to the then-owner of the property-- the
2 builder. Mr. Estreicher was not aware of this proposal when he bought the home.

3
4 COUNCILMEMBER FLOREEN:

5 Sure. Sure.

6
7 FRANCOISE CARRIER:

8 That was his testimony, and I found it credible. I had no reason not to. We did have some
9 delay in the case, in fact, last fall, because Mr. Estreicher and other people nearby
10 apparently found out about the case only, you know, a week or two before it went to the
11 Planning Board, and they requested a delay of my hearing so they could get counsel. So
12 all of--you know, that suggests--that added to the credibility of the testimony that Mr.
13 Estreicher didn't know when he bought the house that there was a proposal to build
14 something much larger.

15
16 COUNCILMEMBER FLOREEN:

17 OK. Now, people seem to--this is the neighborhood's plan of the buildings, right?

18
19 JEFF ZYONTZ:

20 The opponents have provided that.

21
22 COUNCILMEMBER FLOREEN:

23 This is the community's plan--what we've been looking at is something that the community
24 has paid for and provided to us.

25
26 DAVID BROWN:

27 Yes. My clients paid--

28
29 COUNCILMEMBER FLOREEN:

30 So you're good with what it shows.

31
32 DAVID BROWN:

33 Yes. My clients directed the architect designer to build this model, yes.

34
35 COUNCILMEMBER FLOREEN:

36 Sure. OK. Well, I was just--I mean, it looks to me, and I guess someone measured
37 everything, that the Estreicher home is--well, it's a large structure for--if it's an R-60 kind of
38 house, and it is--it comes up to almost--I mean, it's like two-thirds or more than two-thirds
39 of the... That is the gym structure that it's adjacent to? Is that correct?

40
41 STEVEN KAUFMAN:

42 Yes. The Estreicher house comes almost up to their property line.



February 3, 2009

1 COUNCILMEMBER FLOREEN:

2 No, but in terms of height.

4 FRANCOISE CARRIER:

5 In terms of height? I don't think that the record tells us how tall the Estreicher home is.

7 COUNCILMEMBER FLOREEN:

8 I know. So we're just looking at the--at what the neighbors have provided us with.

10 FRANCOISE CARRIER:

11 Yes. We believe this is to scale.

13 COUNCILMEMBER FLOREEN:

14 Pretty much to scale.

16 STEVEN KAUFMAN:

17 It's probably at the scale, as I indicated, at the first two floors, and then there's a step
18 back, and that was purposely done for compatibility issues, so that there would be a
19 scale--

21 COUNCILMEMBER FLOREEN:

22 With the Estreicher house?

24 STEVEN KAUFMAN:

25 Yeah.

27 COUNCILMEMBER FLOREEN:

28 Now, Mr. Knapp asked earlier how tall that 11-story building is that's right across the street
29 here, and we're told it's probably about 110 feet or something like that.

31 STEVEN KAUFMAN:

32 It's probably between 110 and 120 feet.

34 COUNCILMEMBER FLOREEN:

35 Something like that, because it's 11 stories high. And then someone referred to a nine-
36 story building. I'm a little unclear as to where that is in relationship to all this.

38 FRANCOISE CARRIER:

39 That's not on the model, but if you took--if you continued Mr. Estreicher's street, and then
40 across--on the other--His street is Glenbrook, and if you go on the other side of Glenbrook
41 behind those homes on Auburn.

43 COUNCILMEMBER FLOREEN:



February 3, 2009

1 It's on Auburn.

2
3 FRANCOISE CARRIER:

4 It would be on Auburn, and it would back up to homes on Glenbrook.

5
6 STEVEN KAUFMAN:

7 If you have your little drawing...

8
9 COUNCILMEMBER FLOREEN:

10 I have my little drawing.

11
12 STEVEN KAUFMAN:

13 You can see the existing building, which would be torn down.

14
15 COUNCILMEMBER FLOREEN:

16 This is the lowest low building?

17
18 FRANCOISE CARRIER:

19 It's a low building with a black roof.

20
21 STEVEN KAUFMAN:

22 Yeah. But that's going to be replaced with a nine-story building which you approved, I
23 believe, in a recent zoning case.

24
25 COUNCILMEMBER FLOREEN:

26 So that--

27
28 FRANCOISE CARRIER:

29 I'm not sure that was a rezoning, Mr. Kaufman, and the record certainly does not reflect
30 whether it was a rezoning or simply a site plan approval.

31
32 COUNCILMEMBER FLOREEN:

33 You alluded to it in your draft opinion.

34
35 FRANCOISE CARRIER:

36 I did.

37
38 COUNCILMEMBER FLOREEN:

39 So it's the building that has a black roof that's shown here?

40
41 FRANCOISE CARRIER:

42 Yes. That would be torn down, and there has been approval for a nine-story building there
43 in its place.



February 3, 2009

1
2 COUNCILMEMBER FLOREEN:

3 And how far does that--was it in the record how much--how far that extends?

4
5 FRANCOISE CARRIER:

6 It is not in the record how long the building is or how wide it is. All we know is the height.

7
8 COUNCILMEMBER FLOREEN:

9 Now, as I say, I've been sitting here looking at this for a while. It looks to me like the
10 building is sort of built-- proposed by the church to about the height of the church spire? Is
11 that what I'm seeing?

12
13 FRANCOISE CARRIER:

14 The theory was that nothing would be taller than the spire.

15
16 COUNCILMEMBER FLOREEN:

17 That's the idea.

18
19 STEVEN KAUFMAN:

20 Right.

21
22 COUNCILMEMBER FLOREEN:

23 Well, I appreciate the effort to remand this for compatibility purposes, but I fail to see what
24 would change unless we gave the parties direction as to what to tweak. Is it the
25 relationship of the gym to the Estreicher home that we would like them to revisit? I mean, I
26 can see where that's a very close relationship. But I have to ask my colleagues--to ask
27 them to revisit the compatibility issue is to take them back to the hearing record here
28 without any more explicit direction, and I --I mean, it seems to me that I am not sure how
29 we help the matter without giving the parties some express advice. Knowing that the
30 relationship between that house and the gym seems to be--to me to be of some concern,
31 for those of us who were--and I'm not sure what I can say. For those of us who were on
32 the Council when we approved this language in the sector plan, we knew that this was
33 going to be an issue in terms of relationships, and we didn't know how it would be
34 accommodated, and we were good with letting people sort that out in the--with the
35 processes that we have available. So I have to say, if we're asking folks to achieve some
36 improvement on compatibility, it would be helpful to say what are the elements to be
37 addressed. I mean, I myself believe that our housing goals are of critical importance, and I
38 believe that supporting the initiatives of the faith community are important as well. I also
39 believe that we need to respect the community relationship issues here, but keeping in
40 mind that there's an 11-story building on one side of this and the Fire and Rescue Squad
41 on the other side, it's a little hard for me to say for any certainty how I think this could be
42 further adjusted. Certainly, with respect to the--the Old Georgetown Road side does not



February 3, 2009

1 seem to be the issue. Perhaps the relationship between--I mean, I would support revisiting
2 the relationship between the structure and the Estreicher home. It's a home?

3
4 FRANCOISE CARRIER:

5 Yes, it is.

6
7 COUNCILMEMBER FLOREEN:

8 It's a residence. It's not used as an office.

9
10 FRANCOISE CARRIER:

11 Yes, it is a residence. I don't know if anything--any business activities take place in it, but
12 certainly Mr. Estreicher lives there.

13
14 COUNCILMEMBER FLOREEN:

15 Yeah. I mean, that would be, at least from my perspective, something to be revisited. But
16 beyond that, I'm not sure what else I would say to the players here so that they could
17 come back to us with something that would be--that would allow us to finalize a decision,
18 so I guess I solicit from my colleagues further comment on this issue.

19
20 COUNCIL PRESIDENT ANDREWS:

21 OK. Council Vice President Berliner.

22
23 COUNCIL VICE PRESIDENT BERLINER:

24 My understanding from discussions through counsel was that this is as explicit as we
25 could be with respect to this matter.

26
27 JEFF ZYONTZ:

28 You could be more specific, but given the comprehensiveness of the Hearing Examiner's
29 report, it is pretty specific, because it says, you know, "try to make the findings necessary
30 for compatibility," which certainly includes the relationship of the building to the single-
31 family houses.

32
33 COUNCILMEMBER FLOREEN:

34 I have to say, for me, I am not troubled by the height, at least on Old Georgetown Road.
35 So...

36
37 COUNCIL VICE PRESIDENT BERLINER:

38 You're welcome to vote against the motion.

39
40 COUNCILMEMBER FLOREEN:

41 Well, I'm just saying, I don't agree with everything that-- The Hearing Examiner appears to
42 take issue with the plan, with the Master Plan recommendation. I don't know what less
43 than that is, what my colleagues would like to see, I'd hate for everybody to waste all their



February 3, 2009

1 time going through this process without any --any clarity. I mean... I really don't see where
2 this gets us. OK.

3
4 COUNCIL PRESIDENT ANDREWS:

5 OK. A former colleague of mine on the Council used to say, "Everything has been said,
6 but not by everybody." And he would go on, and I won't. I'll be real quick. First of all, the
7 oral argument was very helpful. The model was very useful, to see it. I do think it's clearly
8 incompatible. I think that it's not inherently incompatible to have these uses, and so I do
9 think that remand is a good proposal, because I think that the applicant can come back
10 with a proposal that could hit the right balance, where you hit the goals of the church to
11 continue to serve its community and to assist the poor, our housing goals, and also the
12 reasonable expectations of existing residents and the requirements of the zoning code in
13 terms of compatibility, I think, can be achieved with a revised proposal. So I support the
14 remand, and I agree very much with Council Vice President Roger Berliner's comments in
15 general that he made throughout his questions and comments and relaying his thoughts.
16 So--and we will come back, as was suggested by Councilmember Floreen, to--and clearly,
17 the sense of the body--to revise our rules regarding how we deal with ex parte issues and
18 look at a broader look, as well. So with that--

19
20 DAVID BROWN:

21 Mr. President.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Yeah.

25
26 DAVID BROWN:

27 May I make a quick point of inquiry?

28
29 COUNCIL PRESIDENT ANDREWS:

30 Sure.

31
32 DAVID BROWN:

33 Maybe I should know the answer to this question, but I don't, but I'd like to hear it, at least
34 from the Council or the Council's legal staff. If the applicant elects to make any significant
35 change in the application as a result of the remand, does your remand order need to
36 specify, one way or the other, whether the matter goes back to the Planning Board for a
37 second round of advice, or could the Hearing Examiner send it to the Planning Board on
38 her own?

39
40 COUNCIL PRESIDENT ANDREWS:

41 Good question. I don't know the answer to that. What's the answer?

42
43 FRANCOISE CARRIER:



February 3, 2009

1 It has always been my practice when there is a remand to send the new materials that an
2 applicant submits to technical staff, and I have on occasion requested that the Planning
3 Board review something again. It is--it is the Planning Board and technical staff's
4 discretion whether or not the Planning Board reviews it, unless Council actually remands it
5 to the Planning Board, which Council has done once in my tenure. In my experience, the
6 Planning Board often does not review a case again when it comes back on remand,
7 particularly if they recommended approval first time. Their view is, "Well, we thought it was
8 fine before, and if we thought it was compatible when it was bigger, we're certainly going
9 to find it compatible when it's smaller," and so they don't add it to their crowded agenda.
10 So if--if the Council strongly wishes to have the Planning Board itself review this again, a
11 request to that nature could be put into the remand order.

12
13 DAVID BROWN:

14 May I speak to that?

15
16 COUNCIL PRESIDENT ANDREWS:

17 Yes. Go ahead, quickly.

18
19 DAVID BROWN:

20 I believe that the Hearing Examiner's report sheds a great deal of useful analytical light on
21 this process that was absent from the technical staff report. I think the technical staff can
22 learn a lot from what she has produced. And also, we have a new Planning Board. I would
23 like to see this matter go back through the Planning Board if there is going to be a
24 significant change in the configuration of the buildings.

25
26 STEVEN KAUFMAN:

27 If I could address that.

28
29 COUNCIL PRESIDENT ANDREWS:

30 All right. Go ahead.

31
32 STEVEN KAUFMAN:

33 I would oppose that. My applicants have limited resources. You often hear from opposition
34 they have limited resources. The Hearing Examiner has authority to refer this either to the
35 technical staff or to the Planning Board. I view the suggestion by Mr. Brown as just
36 another dilatory tactic. We're four years in getting to this hearing. Four years. There is a
37 limit to what applicants should endure in terms of dilatory tactics. This is probably one of
38 the most looked-at pieces of property you can imagine, so I would strongly recommend
39 that if you're going to go back with the remand, that it goes back to the Hearing Examiner,
40 who we have said at the initial discussion, we have tremendous respect for.

41
42 COUNCIL PRESIDENT ANDREWS:



February 3, 2009

1 OK. There is no motion to revise the proposed motion, so the motion as proposed will be
2 what we vote on. A roll call vote on the remand or just... Hands are fine on this.

3
4 COUNCILMEMBER TRACHTENBERG:
5 ?????? Either way.

6
7 COUNCILMEMBER KNAPP:
8 Whatever you want to do.

9
10 COUNCIL PRESIDENT ANDREWS:
11 Fine. All right. Let's do that --we usually do roll calls on this. We'll do it. Roll call.

12
13 CRYSTAL BROCKINGTON:
14 Very well.

15
16 COUNCIL PRESIDENT ANDREWS:
17 Please call the roll.

18
19 COUNCILMEMBER ELRICH:
20 Yes.

21
22 CRYSTAL BROCKINGTON:
23 Mr. Elrich. Miss Trachtenberg.

24
25 COUNCILMEMBER TRACHTENBERG:
26 Yes.

27
28 CRYSTAL BROCKINGTON:
29 Miss Floreen.

30
31 COUNCILMEMBER FLOREEN:
32 OK.

33
34 CRYSTAL BROCKINGTON:
35 Mr. Leventhal.

36
37 COUNCILMEMBER LEVENTHAL:
38 Yes.

39
40 CRYSTAL BROCKINGTON:
41 Miss Ervin.

42
43 COUNCILMEMBER ERVIN:



February 3, 2009

Yes.

CRYSTAL BROCKINGTON:

Mr. Knapp.

COUNCILMEMBER KNAPP:

Yes.

CRYSTAL BROCKINGTON:

Mr. Berliner.

COUNCIL VICE PRESIDENT BERLINER:

Yes.

CRYSTAL BROCKINGTON:

Mr. Andrews.

COUNCIL PRESIDENT ANDREWS:

Yes. So the remand is approved.

STEVEN KAUFMAN:

Mr. Andrews, if I could just make one other comment. This goes to a comment that Mr. Leventhal made. With respect, this is a public forum. To state that applicants or proponents shouldn't sit in the audience, I believe, would disenfranchise them. This is very different-- and I speak--this is just personally. This is very different than the ex parte rule. Now, I realize that it may not have any effect on a councilmember one way or the other, but if you are going to show your support, whether it's silent or public, this is the place to do it. And even though you can't speak, as a citizen, you have a franchise. And I feel very strongly, to tell either applicants or proponents not to appear, for example, in front of the school board when they're doing their budget or in front of the Council I think would be wrong. I know that Mr. Leventhal meant it well, and meant it as a warning to all of us to play by the rules, but I think it's important that whether you're a proponent or an opponent, that when this Council holds its hearings or makes its decision in public, they do have the right to be there. So, thank you for that opportunity.

COUNCIL PRESIDENT ANDREWS:

I think Mr. Leventhal is clear people have the right to be here. He just indicated that he was not going to weigh how many people are here on either side in his thinking, which is appropriate.

STEVEN KAUFMAN:

And I took it that way. Yeah.



February 3, 2009

1 COUNCIL PRESIDENT ANDREWS:

2 So. That's it? All right. Councilmember Leventhal.

3
4 COUNCILMEMBER LEVENTHAL:

5 If I may. But, yes, I'm glad all my constituents are here. I'm delighted when citizens are
6 interested in the work of the County Council or the District Council. For the last couple of
7 hours, we've been meeting as the District Council. It is a slightly different circumstance
8 than when an elected body considers the budget. I don't think that's an apt comparison.
9 So my only point was that the information about who was wearing which stickers would
10 not be considered by me in making the decision. I welcome all of my constituents to
11 attend as many meetings of the County Council or the District Council. But I don't think --
12 suggesting that I'm disenfranchising anyone or that no one should show up for a budget
13 hearing is an apt parallel. That was not my point at all.

14
15 STEVEN KAUFMAN:

16 I appreciate the clarification.

17
18 COUNCIL PRESIDENT ANDREWS:

19 OK. Thank you both. And the morning session is adjourned. We will come back at 1:30 for
20 a public hearing. We have 13 speakers, so we will start on time, and now we will have a
21 meeting with the Planning Board.



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

OK. Good afternoon, everybody. We're gonna get started with the public hearings. My colleagues will be up here shortly. I know that we are running behind schedule this morning, and I know they're in the building and they'll be up shortly. So, we have 1,2, 3, 4, 5 hearings and then an action, really, and we're gonna move as expeditiously as we can. Thank you for being patient. Good afternoon, everybody. This is a public hearing on Spending Affordability Guidelines that the Council must set for the FY10 operating budget. The guidelines must be based on affordability rather than need and may be higher or lower than those considered at the public hearing. The guidelines establish a ceiling subject to a subsequent 7-vote Council override on the aggregate operating budget, recommended agency spending allocations, and a ceiling on the property tax revenues. Persons wishing to submit additional material for the Council's consideration should do so before the close of business on February 5, 2009. A Management Fiscal Policy Committee work session is tentatively scheduled for Monday, February 9, 2009, at 2:00. Please call 240-777-7900 for information. Before beginning your presentation, please state your name clearly for the record, and we have Pat O'Neill here from the School Board, Board of Education, who will be representing the Board today, and we thank you for being here.

PAT O'NEILL:

Good afternoon, President Andrews, members of the County Council. I am Pat O'Neill, Vice President of the Board of Education, standing in for Shirley Brandman, our Board President. Her father is very ill, and she had to go to Florida. We thank you for the opportunity to testify on behalf of the Board on the proposed operating budget Spending Affordability Guidelines for FY10. Before I begin, I would like to offer on behalf of the Board sincere condolences on the passing of Councilmember Don Praisner. We will all miss the quiet dedication to the county. The members of the Board of Education look forward to working collaboratively with all of you to achieve our vision of success for all students at a time of unprecedented fiscal challenge. The Montgomery County Board of Education and the Council, along with the County Executive, have been partners in our common effort for the children of our county. The partnership helps ensure excellence in our public school system which, in turn, drives the economic engine of the county. At this time of crisis, it is even more important to remember how much an excellent public school system contributes to the economic success of our county. There are many successes, both here in Montgomery County and across the state. I would commend to you that you read one of the most recent editions of "Education Week," which ranks Maryland number one in the country, contributing from Montgomery County. This year, our children and our staff continue to demonstrate the success of the county's prior investments. As you well know, these results have not occurred by accident. Continued financial support from the County Executive and the Council have made possible the strategic improvements, including reducing class size, expanding job-embedded staff development, helping children with special needs, strengthening the rigor of our curriculum. The Board



February 3, 2009

1 appreciates that education remains one of the Council's top priorities for FY10. Despite
2 the economic downturn, we cannot afford to eliminate programs that are producing
3 positive results. MCPS projects to achieve 20 million of savings this year, a result of a
4 comprehensive hiring freeze, which will provide all the needed resources that are required
5 for increase in the local contribution. The superintendent's recommendation now being
6 considered by the Board calls for an increase of only 1.9%, the lowest percentage in many
7 years. It recommends more than \$35 million of reductions that will have an impact on our
8 local schools but does avoid any across-the-board class size increases. The board
9 appreciates working with you and our delegation to assure that Montgomery County
10 receives an adequate and fair allocation of state aid. We are dismayed that because of an
11 error made by the state officials, Montgomery County Public Schools received 24 million
12 less. We are grateful to the Governor for the Deficiency Restoration Bill, and we look
13 forward to working with you to provide all the necessary resources for our children.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Thank you, Vice President O'Neill, and there are no questions at this point. Yes. There's
17 one. Councilmember Elrich.

18
19 COUNCILMEMBER ELRICH:

20 We're gonna be doing the capital budget and looking at construction projects, and there
21 was some discussion about the practice currently of knocking down buildings and building
22 all-new versus rehab and renovation of structures. Is the Board gonna do any more
23 analysis of the pros and cons of either of those approaches?

24
25 PAT O'NEILL:

26 Right now, there's nothing on our agenda. I will say, though, that over the course of my 10
27 years on the Board of Education, the Council and the Board have both looked at this
28 issue, you know, the viability or the fiscal responsibility of tearing down as opposed to just
29 renovating the buildings, I mean, modernization as, you know, everything but one wall
30 versus just a slight renovation, and the cost efficiency, the greening of the buildings, has
31 resulted that it's more cost-effective, you know, than starting essentially from scratch than,
32 you know, the older way of slight tweaking, but the answer is, we don't have it on our
33 agenda, but, you know, it has been looked at by you all and the Board in the past. I know
34 it was a pet issue of Mr. Subin's and working with Dick Haas, who was Director of
35 Facilities at the time, looking at the efficacy of that.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Thank you, Councilmember Elrich. All right. That concludes the-- Nope. It doesn't. Sorry.

39
40 COUNCILMEMBER ERVIN:

41 Just a brief comment to Councilmember Elrich's question. Not only did this come up
42 before, but there was a taskforce on this to report to the last Council on the process, so I
43 think that it's gonna continue to be something that is raised because of the amount of



February 3, 2009

1 dollars that it requires for us to tear down and rebuild when sometimes it might not be
2 necessary, but this has been an ongoing conversation, and we should talk to staff about
3 resurrecting the findings of that study.

4
5 COUNCIL PRESIDENT ANDREWS:
6 Councilmember Knapp.

7
8 COUNCILMEMBER KNAPP:

9 Just very briefly, I appreciate the concerns, and I have raised the issue, as well, not just
10 locally, but I've talked to folks in Loudoun County who are building new schools and folks
11 in Howard County who are renovating schools, and interestingly, especially if you do kind
12 of an apples-to-apples comparison of high schools, the cost--whether you're renovating a
13 school, which is what they've done in Howard County, or building from scratch in Loudoun
14 County--you still get to, roughly, the \$100 million, \$120 million range for a high school, no
15 matter which approach you take, which is very disconcerting, but it doesn't seem to be
16 that-- From either our experience or those anecdotally around us, you still get back to
17 roughly the same point, which is just a really big number.

18
19 COUNCIL PRESIDENT ANDREWS:

20 On that daunting note, we'll close the public hearing. Thank you. There's an MFP
21 Committee work session tentatively scheduled for February 9, next week, and we'll move
22 on to the next public hearing, which is a public hearing on Bill 1-09, Finance Spending
23 Disclosure, that would require the county to develop and operate a web site that includes
24 information on certain county payments to contractors and grantees, provide guidelines
25 for public access to the information on the web site, and generally amends the county law
26 governing public access to information about county payments. Persons wishing to submit
27 additional material for the Council's consideration should do so before the close of
28 business on February 5. A Management and Fiscal Policy Committee work session is
29 tentatively scheduled for Monday, February 9 at 2:00, and please call 240-777-7900 for
30 information. We have 3 speakers signed up on this measure, and I'll call you all up.
31 Please come up at the same time. You each have 3 minutes, as will all the speakers
32 today. Be sure to press the button in front of you and introduce yourself before you speak
33 and then stay at the table. There may be questions. So with that, the 3 speakers for this
34 bill are Karen Hawkins, speaking for the County Executive; Paula Bienefeld, speaking as
35 an individual; and Janis Sartucci, speaking as an individual, and, Ms. Hawkins, you are
36 first. OK.

37
38 KAREN HAWKINS:

39 Thank you. Good afternoon. I'm Karen Hawkins, Chief Operating Officer of the
40 Department of Finance. I'm here today to testify on behalf of the County Executive in
41 support of Bill 1-09, Finance Spending Disclosure, with amendments. The bill requires the
42 development and operation of a web site that displays county payment data in a
43 searchable form. Payees who receive an aggregate payment of \$25,000 or more in any



February 3, 2009

1 fiscal year would be included on the web site. However, confidential data would be
2 excluded. The web site would be accessible to the public at no cost and would permit the
3 user to search data for each fiscal year by payee name, department or office making the
4 payment, and payee's ZIP code. The effective date of the legislation is July 1, 2009. The
5 County Executive supports this bill because it furthers the goals of accountability and
6 transparency in county government. However, he recommends that the bill be amended
7 to, one, make it effective shortly after the scheduled implementation of the ERP system
8 and, two, applicable to spending data that is accumulated after that date. More
9 specifically, we recommend that the bill take effect on September 1, 2010, which is 3
10 months after the scheduled July 1, 2010, implementation date for the ERP system. That
11 amendment will allow executive staff to focus its efforts on developing a solution that is
12 integrated with the ERP system. These are the same staff, technical and functional
13 subject matter experts, who will participate in the design and configuration processes for
14 the ERP. Design efforts will begin in the next several weeks and continue over the coming
15 months. Amending Bill 1-09 to make it clearly applicable to spending that occurs after the
16 effective date of the bill will ensure consistency with the data that is anticipated to be
17 available in the ERP system. It should be noted that the Office of Procurement is currently
18 working with the Department of Technology Services to modify its web site to allow for
19 searchable on-line access to current county contracts. While this provides information on
20 contracts rather than payments, it does provide for expanded public access to county
21 information in the interim. We have some questions regarding the meaning and purpose
22 of certain components of the bill, such as the order and level of detail at which searches
23 are anticipated to be able to be performed. Staff in the Departments of Finance and
24 Technology Services plan to participate in the MFP Committee's work session on this bill
25 that is scheduled for February 9. We look forward to working with the Committee and to
26 discussing those concerns at that time.

27
28 COUNCIL PRESIDENT ANDREWS:

29 Thank you, Ms. Hawkins, and we look forward to the participation by the Office of the
30 County Executive at that work session, as well. I understand Paul Bienefeld is not here, so
31 our next speaker, final speaker, will be Janis Sartucci. Good afternoon.

32
33 JANIS SARTUCCI:

34 Thank you. Good afternoon. I'm here before you this afternoon to request that you pass
35 Bill number 1-09. My message to you today is simple. We don't know what we don't know.
36 As examples of county procurements that are not transparent to the public, I bring you
37 examples from Montgomery County County Public Schools. In my short time today, I have
38 4 words for you. The 4 words are IQinVision, Promethean, EasyLobby, and SMART
39 Board. These are 4 words not found in Board of Education minutes approving
40 procurements of the products from these companies. In total, I would estimate that these
41 4 words represent contracts of over \$30 million. That's over 30 million in procurements
42 that are not reflected in MCPS Board of Education minutes. Each of these procurements
43 represents a commitment of taxpayer dollars of well beyond \$25,000. Briefly, let me start



February 3, 2009

1 with IQinVision. How did Montgomery County citizens discover that this contract had been
2 made? In a press release from IQinVision, which I've included in my attachments. The
3 contract with this company is not mentioned in Board minutes. Neither is their product
4 IQeye or the consultant, Mr. Gompers, that obtained the contract. Rumor has it that this
5 procurement cost at least \$9 million, and see my Attachment "A." Promethean. How did
6 citizens discover the existence of thousands of these products? A press release from
7 MCPS announced the placement in classrooms. Repeated Maryland Public Information
8 Act requests disclosed that 3,300 boards had been purchased for classrooms, in total, a
9 commitment of over \$20 million in taxpayer funds without obvious Board of Ed. review. In
10 support of this purchase, the superintendent has produced two different versions of a
11 June 9 memorandum. Those are attached. However, neither version gives information
12 about an invitation for bid, a request for proposal, or details of the lease of these products
13 through Dell. A lease for 2,600 Promethean boards and purchase orders were obtained
14 via a Maryland Public Information Act request after 60 days from the initial request. The
15 initial response to the MPIA from MCPS was that in order to obtain the standard
16 procurement documents for this procurement, I would have to pay \$618.75. I reduced my
17 request to only the Promethean boards that are installed at Carver, and when a
18 substantive response was finally received to my request, I received purchase orders for
19 the Carver Promethean boards but no IFB, RFP, or Board minutes on that purchase. I did
20 receive, however, a lease for 2,600 Promethean boards that had been executed by
21 MCPS' C.O.O. Larry Bowers. It appears, therefore, that current practice is that major
22 procurements are not signed off by the Board of Education President and, therefore, these
23 procurements are not appearing in Board minutes. Let me note here, there are still an
24 additional 700 Promethean boards that are present in classrooms, but no public
25 information exists to detail when or how these boards were purchased, and the yellow
26 sticky on your packet is the signature line where Mr. Bowers has signed off on that lease.
27 EasyLobby. Citizens discovered this procurement through an article in the "Gazette"
28 newspaper. This procurement is also not mentioned in Board of Ed. minutes, and it's an
29 unknown contract cost. Also, I have attachment on that. SMART Board, we've just seen
30 them. We know they're there, but we don't know when they were purchased or how much
31 they were. I urge you to pass this bill and provide a ray of sunshine to county
32 procurements and thank you for this opportunity to speak.

33
34 COUNCIL PRESIDENT ANDREWS:

35 Thank you, as well. The bill that you referenced, which is Bill 1-09, is sponsored by
36 Council Vice President Berliner and cosponsored by myself and Councilmember Elrich,
37 and we appreciate your support of the measure. It only applies to county agencies
38 because we cannot make law for the school system. Only the state can do that. I think the
39 issues you've raised are significant ones and are important and can be addressed in other
40 ways. The bill, though, can't get at that, although there is a state bill that's been introduced
41 by Delegate Carr that would apply, I think as you know, to the school system.

42
43 JANIS SARTUCCI:



February 3, 2009

1 We have the same testimony on Friday.

2
3 COUNCIL PRESIDENT ANDREWS:

4 OK, very good, and the County Council has endorsed that state legislation, and we are--

5
6 JANIS SARTUCCI:

7 And I can only just hope.

8
9 COUNCIL PRESIDENT ANDREWS:

10 We're hopeful, too. Councilmember Ervin has a question or a comment.

11
12 COUNCILMEMBER ERVIN:

13 Thank you very much. I just want to direct my question to Ms. Hawkins. Thank you very
14 much for your testimony. I think it was very well stated where the County Executive is, and
15 I want to speak regarding the ERP system and ask you two questions. One, we're dealing
16 with this through MFP Committee, and at the end of the day, we're not sure how and how
17 much is going to be funded toward this end, so this is still fluid. It's still a work in progress.
18 Hopefully, you know, our colleagues on the Council will agree that we think this is a
19 worthwhile project and that we should move forward. It's very expensive. I want to ask you
20 what you think the fiscal note to this is going to be. In the event that we aren't able to go
21 as far as we would like to go with the ERP system, how would you implement in the event
22 that that should happen?

23
24 KAREN HAWKINS:

25 Well, I'm gonna ask, also, if we have a representative from Technology Services who may
26 want to join us here, but the data that's available in our current system is very
27 disaggregated, and we would need to build a system offline to aggregate that data in the
28 manner in which you're talking about here and then to disaggregate it back down to get at
29 the level of detail that I believe this bill calls for because it calls for each payment
30 transaction. That is a significant level of staff time because we don't have those
31 capabilities for that in our current systems. The data repository that would be available
32 with ERP will have that data within it, and the way it will be structured, we'll be able to get
33 at it much more easily, but basically, there are no abilities within our current system to
34 aggregate and then disaggregate data in this manner, so it would be a significant level of
35 staff time. Those are the same people, both in DTS and Finance, who are supposed to be
36 starting in the next two weeks, mid February, working on the design stage for the ERP.

37
38 COUNCILMEMBER ERVIN:

39 OK. Yesterday in MFP, there was a briefing that we received from the Executive branch
40 on results accountability as it relates to budget decisions, and so we all at this dais are
41 very much in favor of transparency, and we want to all move in that direction and hope we
42 get there together, but I just want to state for the record that this could be a very, very
43 expensive undertaking in the event that the ERP funding doesn't get there.



February 3, 2009

KAREN HAWKINS:

It could be. I would say there are two states, for example, who built in this capability with their ERP system implementation, and even if you use in-house resources, it's a significant investment of those resources, and if you're implementing an ERP, you're drawing those away from that effort.

COUNCILMEMBER ERVIN:

OK. Thank you very much.

COUNCIL PRESIDENT ANDREWS:

OK. Thank you, Councilmember Ervin, and thank you-- Oh, we have--Councilmember Trachtenberg has an additional comment.

COUNCILMEMBER TRACHTENBERG:

Well, actually, I want to follow up on what my colleague Councilmember Ervin raised. She's indeed right. Yesterday afternoon in MFP--and the Council President was there--we talked a little bit about how important technology investments were to the CountyStat initiative and, obviously, the results-based budgeting that we were looking to pursue. I would really just want to state, since we are in a public forum and I think it's appropriate to mention this, you know, in terms of contract monitoring and what needs to happen with that, the greatest need to improve our technology is in the Department of Health and Human Services, and I brought that up yesterday, and since I have a captive audience this afternoon, I want to bring it up once again because it would seem to me that beyond the issue of performance, the HHS Department would be the department where the contract monitoring-- The most efficient way to make improvements is really with the right technology investments, and while we have some strategic planning that's ongoing, we really are not at the point where we're identifying investments, and I'd like to see that sped up. I haven't changed my opinion about it, but I just wanted to voice it.

COUNCIL PRESIDENT ANDREWS:

Thank you, Councilmember Trachtenberg. That closes the public hearing. Thank you very much. MFP Committee work session is tentatively scheduled for February 9, and we'll move on to the next public hearing, which is on Zoning Text Amendment 8-18-- Land Use, Christmas Tree Sales-- that would delete or revise the date restrictions for Christmas tree sales and generally amend the provisions for Christmas tree sales and the sale of seasonal decorations. Persons wishing to submit additional material for the Council's consideration should do so before the close of business on February 19, 2009, and a PHED Committee--Planning, Housing and Economic Development Committee--work session is tentatively scheduled for Monday, February 23 at 2:00. Please call 240-777-7900 for information. We have 5 speakers signed up for this hearing-- representing the County Executive, Reginald Jetter; Greg Russ, representing the Montgomery County Planning Board; Reverend Debbie Scott, North Bethesda United Methodist Church;



February 3, 2009

1 Kenneth Ow, speaking as an individual; and Daniel Taylor of Dan and Brian Trees--and it
2 looks like we have 4 of the 5, so we'll start with the representative from the County
3 Executive--Mr. Jetter. Hi.

4
5 REGINALD JETTER:

6 Good afternoon. Good afternoon. My name is Reginald Jetter, Division Chief, Case Work
7 Management in the Department of Permitting Services. I'm speaking today on behalf of
8 the County Executive Isiah Leggett in support of the proposed ZTA 08-18 Land Use,
9 Christmas Tree sales. The ZTA repeals calendar restrictions on the sale of Christmas
10 trees in certain residential, commercial, agricultural, and mixed-use zones. These
11 restrictions are unnecessary, given the limited duration of the Christmas season and the
12 life of the trees themselves. Currently, DPS requires a use and occupancy certificate for
13 the sale of Christmas trees on residential property because this is a change of use on the
14 property. In 2008, DPS issued 7 use and occupancy certificates for the sale of Christmas
15 trees. It is likely that Christmas trees were sold at other residential locations without the
16 required U&O certificate. However, DPS is not aware of those specific locations because
17 it enforces the current sales restrictions on a complaint basis. In comparison to other
18 types of complaints received by DPS, complaints involving the sale of Christmas trees
19 have been minimal. Given the depth of the current economic downturn and its impact on
20 the county's budget, the County Executive believes that DPS should prioritize
21 investigation and enforcement of violations that involve health and safety issues rather
22 than use its resources to more equitably investigate violations of the calendar year
23 restrictions on Christmas tree sales. Since those restrictions are for an extremely short
24 period of time and the market for Christmas tree sales is short, as well, it is appropriate to
25 repeal them. I look forward to working with the PHED Committee as it considers the ZTA.

26
27 COUNCIL PRESIDENT ANDREWS:

28 Thank you. Mr. Russ from the Planning Board.

29
30 GREG RUSS:

31 Thank you. For the record, Greg Russ, representing the Montgomery County Planning
32 Board. The Planning Board did hear this ZTA on January 29 of this year. The Board
33 unanimously recommended approval of the ZTA as submitted. The ZTA proposes to
34 repeal the calendar restrictions on the sale of Christmas trees in certain residential,
35 commercial, and agricultural or mixed-use zones. Currently, Christmas tree sales are
36 permitted only between December 5 and December 25. The County Executive's position
37 is that the calendar restriction on Christmas tree sales is unnecessary, given the limited
38 duration of the Christmas season and the limited life of the cut trees. The Board believes
39 that there is merit to eliminating the date restrictions, given the self-regulating nature of
40 the use and, therefore, has no objection to the proposed amendment. Thank you.

41
42 COUNCIL PRESIDENT ANDREWS:

43 Thank you, Mr. Russ. Reverend Debbie Scott.



February 3, 2009

DEBBIE SCOTT:

My name is Deborah Lynn Scott, and on the third day, I was busted, according to the "Washington Post." I have served as the pastor of North Bethesda United Methodist, located on Old Georgetown at the corner of Lone Oak, for the last 10 years. We pride ourselves on being a neighborhood church, always striving to be a good neighbor as we create opportunities for our community to come together for worship service and social events. We're a church committed to missions. We house the Bethesda Food Closet, serve meals at the Rockville Shelter at least two weeks a year, serve meals at the Bethesda Shelter at least once a month, not to mention supporting a missionary in the Congo working on a medical mission group in Tanzania. Our building is used for a Montessori school, a music school, Jazzercise, and various support groups. Like any nonprofit, we work very hard to meet a budget that supports our vision for ministry. One way we do that is through the sale of Christmas trees. When I received a phone call December 1 from Frank De Lange with the Department of Permitting Services, I was absolutely flabbergasted that there was a Montgomery County law that stated Christmas trees could not be sold until December 5. We've had a tree lot on our property for many years, and we were not aware of any such law. Wanting to comply with the warning issued and avoid a \$500 fine, we closed our lot until I could track down the source of this law. Everyone I talked to--and the list was long, starting with Mr. Berliner's office--first laughed when I inquired about this law. Most folks didn't know it existed. The origin of the law could not be found. The reasoning behind such a law was not stated. There's a brief reference on the Land Use Table, Chapter 59, Section "C," Paragraph 1.31. We did a lot of research to find that. I pointed out that many tree lots across our county were selling trees, including those located on county property. Only if a complaint was received would those be closed down. I chose to pursue answers that will, hopefully, lead to the change we're talking about today. I'm grateful that County Executive Mr. Leggett had proposed the change at your meeting December 9. I understand perhaps the original law was established out of concern for safety. Many commercial lots are selling trees that are cut much earlier than we do. We're all aware that as soon as the Halloween merchandise is removed from store shelves, it's replaced with Christmas merchandise. We begin to hear those songs about a white Christmas long before the Thanksgiving turkey is even out of the oven. It's become the tradition for many families to purchase their Christmas tree and put it up the day after Thanksgiving, so I'd suggest if a date is needed on the books, that it be the day after Thanksgiving, which would make it the fourth Friday of November. I also understand that a permit is necessary to sell Christmas trees. This is another one of those little-known facts. Sitting in this room today, I'm sure we could come up with a list of at least 100 lots that operated in Montgomery County, certainly after December 5, in 2008. Yet, only 7 permits were issued. Is there a need for the permit if we're really looking at this issue? If so, what would be the method of informing those who have a Christmas tree lot and establishing a uniform way of enforcing such a permit process? For those at North Bethesda United Methodist Church, this became a justice issue. The date seemed



February 3, 2009

1 arbitrary and the enforcement even more so. Other counties in our areas have no such
2 restrictions. Thank you much.

3
4 COUNCIL PRESIDENT ANDREWS:

5 Thank you. Kenneth Ow.

6
7 KENNETH OW:

8 Mr. President and Councilmembers, my name is Kenneth Ow. I reside at 13405 Rippling
9 Brook Drive in Silver Spring. I've lived in Montgomery County since transferring to the NIH
10 from California in 1980. My sympathy goes out to the Councilmembers as well as the
11 county and the Praisner family for having just lost not only Don Praisner this last week, but
12 Marilyn Praisner a year ago. These two individuals devoted their lives to making
13 Montgomery County a better place for you and me to live. I have been a civil servant for
14 over 33 years, all with the U.S. Department of Health and Human Services. I work full time
15 as a senior budget analyst at the NIH. I also volunteer on the Montgomery County
16 Community Emergency Response Team, or CERT, and have devoted many countless
17 hours volunteering not only for CERT, but Rebuilding Together, Interfaith Works, Rockville
18 Human Rights Commission, and the list goes on. I, too, have devoted my life to making
19 this county a better place to live. For example, I recently spent over 20 hours of my time
20 preparing for, managing, and participating with the Montgomery County Fire Rescue
21 Service taskforce for the inauguration by keeping Metro rail stations open and well-
22 patrolled for health and safety issues that could've arisen. Fire, EMS, and CERT were
23 among the trained responders on site on the platforms throughout the day's events. I
24 come before you this day to lend my support to the proposed zoning amendment
25 removing the date restrictions from the sale of Christmas trees within the county. I'm an
26 active member and in leadership roles at North Bethesda United Methodist Church, the
27 focal point of some zoning enforcement issues that arose over the sale of Christmas trees
28 after Thanksgiving last year. I'm sure that the out-of-date rules that exist on the books
29 were a good idea back in the day, when the ordinances were first enacted, but in the 21st
30 century, it's now usual and customary that the sale of Christmas trees throughout the
31 county starts the day after Thanksgiving, if not earlier. To ban the sale of cut trees before
32 December 5 makes no sense at all now. To selectively enforce the rule makes even less
33 sense, since the sale of trees at North Bethesda Methodist was no different than local
34 Montgomery Volunteer Fire Department selling trees on county property. Code
35 enforcement folks told me that they only responded to complaints and asked if I wished to
36 file a complaint against any of the other tree lots. Being a good Christian, I chose to try to
37 right the wrong, not to make matters worse for others. Rather than complaining about
38 other tree lots, we chose instead to contact our elected representatives to enact change.
39 This amendment before you is a result of that effort. Fortunately for the tree seller, even
40 though they lost 4 days of sales, all of the adverse publicity surrounding the code-
41 enforcement closure actually helped the final sales count, of which the seller donates a
42 percentage of his proceeds to our church, so not only do Angelo and his employee
43 depend on the sales to make a living, so does our church depend partly on that income to



February 3, 2009

1 survive, and in these hard times, hard economic times, who wants to be the Grinch who
2 regulated any business from losing legitimate sales or of goods within the county or took
3 donations away from a church? Thank you.

4
5 COUNCIL PRESIDENT ANDREWS:

6 Thank you. Let me see if Mr. Taylor has arrived, Mr. Taylor from Dan and Brian Trees. I
7 don't see him. OK. All right. There are a couple of Councilmembers who have questions or
8 comments-- Councilmember Leventhal and Councilmember Knapp.

9
10 COUNCILMEMBER LEVENTHAL:

11 I want to first address Chairman Knapp of the PHED Committee and also Mr. Zyontz, who
12 will staff the PHED Committee on this issue. I hope that when the packet is prepared for
13 the PHED Committee that correspondence that the Council has received expressing
14 support for a restriction on Christmas trees, on commercial activity in a residential zone,
15 would be included in the packet. We've heard testimony in support of the County
16 Executive's proposal. That's great. Very glad you're here. Appreciate the input. I know
17 there is another point of view in the community because we've received e-mails about it. I
18 know there are concerns in the community about commercial uses in residential zones. It
19 is interesting to read the legislative history, and Mr. Zyontz has done a good job here. You
20 know, we would not allow a used car lot in a residential zone, and so an exception was
21 made for Christmas tree sales, recognizing that the seasonal nature of Christmas tree
22 sales and the special significance and the convenience for people in residential zones,
23 and during that timeframe when the law was originally enacted, there was a rough
24 estimate of what the Christmas season consists of. It was not the intent that there be year-
25 round commercial activity in residential zones, so I won't be present when the PHED
26 Committee takes this up, but I do think that there is another point of view on this issue
27 that--you know, appreciating the participation of those witnesses who support the County
28 Executive's proposal--I do think there is some validity to the initial special exception that
29 was made for Christmas tree sales, and I don't want to debate our distinguished
30 witnesses. I appreciate all the community service that all of our houses of worship
31 perform, but the fact that the commercial sector heavily promotes, you know, shopping
32 right after Halloween and suggests that the day after Halloween, it's the Christmas
33 season, in and of itself, I don't think that affects whether or not we should allow
34 commercial uses in a residential zone, and so I've heard expressed to me by my
35 constituents some concerns that seem valid about lighting, glare, traffic, debris, and fire
36 risk that I just wanted to indicate seemed real to me, and I don't think this issue is all that
37 funny. I know that, you know, the "Washington Post" thought it was a cute story to put on
38 page one in the Christmas season, but we work for our constituents. We don't work for the
39 "Washington Post." I'm a lifelong subscriber to the "Washington Post." I appreciate the
40 work they do, but we should be very cautious about jumping to policy conclusions
41 because some editor, you know, thought a story would be cute on page one.

42
43 COUNCIL PRESIDENT ANDREWS:



February 3, 2009

1 OK. Thank you, Councilmember Leventhal. Councilmember Knapp, then Council Vice
2 President Berliner.

3
4 COUNCILMEMBER KNAPP:

5 Thank you, Mr. President. More a question for staff. There's been reference to Christmas
6 trees being sold on county property, and I wasn't sure what that was, and it was the fire
7 stations, and I think, to clarify, the county doesn't own those fire stations. They're all
8 volunteer fire departments, and I would appreciate those who would be selling Christmas
9 trees, but I would just like to get a sense of that, just for clarification, if...

10
11 JEFF ZYONTZ:

12 I think there are some that the county owns, but mostly, they're owned by the--

13
14 COUNCILMEMBER KNAPP:

15 Yeah. I'd be surprised if any of the sold Christmas trees, but I'd just be very curious to see.
16 OK. Thank you.

17
18 COUNCIL PRESIDENT ANDREWS:

19 OK. Thank you. Council Vice President Berliner.

20
21 COUNCIL VICE PRESIDENT BERLINER:

22 I want to thank Councilmember Leventhal for his comments because it is interesting. It is
23 true that I was shocked by this when I first heard about it, and I will tell you that over the
24 course of time, people have contacted my office, as they have Councilmember
25 Leventhal's office, and expressed concern with respect to it because they do live in
26 residential neighborhoods that suddenly now become commercial, and, on the one hand, I
27 look at your situation, and I go, "Do I want to limit a church in its ability on its church
28 property to make sales of this nature?" No, but there are, in my district, a number of
29 commercial operations on residential lots in the midst of a residential neighborhood having
30 the sale of these trees that I think is fundamentally different than the equation that faces
31 you, and I would ask staff when it goes to PHED Committee as to whether or not there is
32 a distinction that the law would recognize between nonprofit sales and commercial sales
33 in residential neighborhoods because it does seem to me to be at least worth exploring
34 whether that is a way to address the church's desires as well as protect neighborhoods
35 that are seeking to ensure that they have a Christmas that they enjoy, as well. Thank you.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Thank you. Councilmember Elrich.

39
40 COUNCILMEMBER ELRICH:

41 I also want to thank George for bringing up the point about this other set of concerns. I
42 think there's a date that we can find that makes sense for the people selling trees that also
43 deal with the concerns of the neighborhood, so I'm not in favor of obliterating the date and



February 3, 2009

1 getting this legislation off the books, but if we come to a more reasonable date--and it
2 struck me that the day after Thanksgiving actually was a more reasonable date--I'd be
3 happy to do that. I'm not interested in seeing thing put up as early as Halloween, and I
4 don't think we can trust people's good judgment to recognize when trees are dead and dry
5 because we know of all too many examples of trees that are dead and dry that catch fire
6 because people don't move them in a timely manner, so I don't want to encourage
7 somebody to buy it earlier, then try to stretch it out through the Christmas season.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Thank you, and that concludes the public hearing. Thank you very much. The PHED
11 Committee will schedule a work session on this at some point. OK.

12
13 COUNCILMEMBER KNAPP:

14 At some point.

15
16 COUNCILMEMBER FLOREEN:

17 "At some point." Ha ha ha!

18
19 COUNCIL PRESIDENT ANDREWS:

20 All right. Next-- Did you want to speak?

21
22 COUNCILMEMBER KNAPP:

23 No, no. I was waiting to get to the next item.

24
25 COUNCIL PRESIDENT ANDREWS:

26 OK. All right. Our next public hearing is a supplemental appropriation--the county
27 government's FY09 operating budget, Montgomery County Fire and Rescue Service,
28 \$930,000 for Urban Area Security Initiative, Metropolitan Medical Response System grant
29 award--and the source is a federal grant. There will be a Public Safety Committee work
30 session tentatively scheduled for February 5, and persons wishing to submit additional
31 material for the Council's consideration should do so before the close of business today
32 because the committee session will be in two days. A Public Safety Committee session
33 will be at 9 A.M. on Thursday, unless otherwise modified, and you can call 240-777-7900
34 for information. There are no speakers for this public hearing, and so there are no
35 comments, so the public hearing is closed, and we'll move on to our final hearing-slash-
36 forum this afternoon, which I'll introduce briefly because this is not a traditional public
37 hearing. It's a community forum that the Council is having to hear specifically from the
38 public about suggestions for saving money in the county's budget. We have numerous
39 hearings during the year, and we will have several hearings relating to the operating
40 budget that will be presented by the County Executive in mid March. We'll have 5 hearings
41 on that. We'll probably hear from 150 to 170 people, and at this point, we are very
42 interested, because we have such a looming deficit next year of about half a billion
43 dollars, to hear from people about how we might save money--what we could do without,



February 3, 2009

1 what is lower on the totem pole, where savings could be found--and so we appreciate
2 hearing not just today from the people here today and this evening, but also throughout
3 the next few months as we go through the budget. With that, we have 5 speakers, I
4 believe, scheduled for this afternoon, and we will have about 11, I think, this evening at
5 that session on the same subject, and I appreciate Councilmember Elrich's urging that we
6 have an evening portion. We were gonna have it last Tuesday. It got snowed out, and we
7 have both afternoon and evening sessions on that today. The 5 speakers we have signed
8 up for this afternoon, and each speaker will have 3 minutes. Be sure to press the button in
9 front of you and introduce yourself. There may be questions from Councilmembers, so
10 please stay at the dais, and the 5 speakers for this session this afternoon are Patricia
11 Salomon, representing the Coalition to Make Montgomery County a Peace County;
12 Joseph Sandler, representing the Jewish Community Relations Council; Eric Sterling,
13 speaking as an individual; Esther Kravitz, representing the National Association for the
14 Mentally Ill, Montgomery County; and Kevin Rhea, speaking as an individual, and it looks
15 like we have everybody here. Good. Ms. Salomon, you're first. Good afternoon.

16
17 PATRICIA SALOMON:

18 My name is Pat Salomon, and I'm here representing the Coalition to Make Montgomery a
19 Peace County. First, let me also express my condolences for the loss of your colleague.

20
21 COUNCIL PRESIDENT ANDREWS:

22 Thank you.

23
24 PATRICIA SALOMON:

25 Uh, thank you for the opportunity to offer today the perspective of Peace Action
26 Montgomery and our coalition of 18 organizations on an alternative approach to the
27 county's current budget crisis. I have distributed a list of groups supporting our insistence
28 that a peace resolution is an important part of the purview of the Council related to its
29 budget. In this time of budget shortfall, it is typical, maybe even inevitable, for local
30 governments to cut spending by reducing county services, and that's what you've all been
31 involved in, reducing the wages and benefits of various public servants--our teachers, our
32 firefighters, our police officers, and government employees--but we ask you instead to
33 take a larger look at other possibilities to rectify the situation. The policies of our federal
34 government over the past 8 years have really slowly starved our local governments and
35 communities under a philosophy that less government is good government. The
36 government and, by extension, the government worker was seen as the problem. The
37 pervasiveness of this philosophy has really seeped into our own community to a surprising
38 extent, and I'm asking you today to challenge that idea, to recognize that the government
39 that helps society, that does good is good, that the workforce and the effective
40 communities that are essential to good government need to be nurtured through your
41 budget work, and that their basic needs met and not slashed through budget cuts. One
42 elephant sitting in the middle of the budget crisis here in Montgomery County is the
43 federal deficit, which has all but stopped the flow of monies the community needs, and



February 3, 2009

1 has really cast a long shadow over all of our futures. In no small part, that deficit has been
2 created by a wartime economy, with the war in Iraq alone estimated to have cost us more
3 than \$3 trillion in direct and indirect costs. According to a congressional report, by the end
4 of 2007, when we began this campaign to make Montgomery a peace county, every
5 household in Montgomery County had, on the average, paid war-related taxes of more
6 than \$20,900, money that could've easily flowed instead into the county for vital services
7 and improvements or been used by those families for their children's college education or
8 other important family needs. We actually spend-- You're running that deficit of a half a
9 million dollars. We actually spend one half a million dollars every minute on the Iraq War,
10 so your deficit could be conceivably easily fixed if we took a stand on the war and helped
11 other communities to take a stand on it. That's \$500,000 per minute, or--

12
13 COUNCIL PRESIDENT ANDREWS:

14 Thank you. I have to-- You can finish the sentence, but we'll read your testimony.

15
16 PATRICIA SALOMON:

17 OK. Well, thank you very much. I just want you to support Barack Obama's current efforts
18 to really look at the war and the end of the war by standing up as a county and helping us
19 end our war expenditures.

20
21 COUNCIL PRESIDENT ANDREWS:

22 Thank you.

23
24 PATRICIA SALOMON:

25 Thank you.

26
27 COUNCIL PRESIDENT ANDREWS:

28 Thank you. Please stay at the table. There may be questions. Joseph Sandler,
29 representing the Jewish Community Relations Council.

30
31 JOSEPH SANDLER:

32 Thank you very much, President Andrews and members of the Council. My name is Joe
33 Sandler. I'm Vice President of the Jewish Community Relations Council of Greater
34 Washington, which represents more than 200 Jewish organizations throughout Greater
35 Washington, including 7 social service agencies which serve vulnerable populations but
36 on a nonsectarian basis here in our county. These populations include low-income
37 families, children and adults with developmental disabilities, seniors, immigrants, and
38 victims of domestic abuse. We understand and I think it's fair to say that our partners in
39 the nonprofit sector understand the difficult choices that you have to face in developing a
40 fiscal year 2010 budget. \$500 million is a big number, and we appreciate the leadership
41 that this Council has already shown in making some very difficult choices and achieving
42 these \$35 million or so as a down payment on the significant deficit that's gonna be faced
43 for the coming fiscal year. Two points that we would just ask you to keep in mind as you



February 3, 2009

1 go through this difficult, challenging process. As the economy falters, each of these
2 vulnerable populations, along with other vulnerable groups, are more at risk and in need
3 of support services, and as the county prioritizes needs and the Council determines how
4 to close this gap, the JCRC urges you to hold harmless the direct safety-net services that
5 support those on the edge of crisis-- including food, shelter, clothing, domestic and elder
6 abuse services--because of the negative multiplier effect that can result from cutting those
7 direct services. People, as you all know all too well, in a time of recession, difficult need,
8 people who are on the edge, on the edge of losing health care, on the edge of
9 unemployment, when they're pushed over at the cost of the county--the cost of the state,
10 as well--both later in the fiscal year and in future fiscal years--is even greater. The JCRC
11 is a member of the Safety Net Coalition, which is a coalition of nonprofit organizations in
12 the county committed to serving the most vulnerable and urging you, the leadership of our
13 county, to protect the safety net at this critical time, and secondly, just to suggest that at
14 this time when the county and state can't afford to expand services and when the nonprofit
15 sector is suffering from reduced level of private support, the funding leveraged by the
16 county's support of nonprofit organizations means more people can be served who are in
17 need. The money spent in partnership with the nonprofit sector is really an effective and
18 efficient way of leveraging the scarce dollars that the county has. So, there are very
19 difficult choices and decisions to be made in the coming weeks and months. The Jewish
20 community of Montgomery County urges you to protect the weakest and most vulnerable
21 members of the community as we work with you and our nonprofit partners work with you
22 through this difficult time. Thank you very much, Mr. President.

23
24 COUNCIL PRESIDENT ANDREWS:

25 Thank you. Mr. Sterling.

26
27 ERIC STERLING:

28 Good afternoon, President Andrews, members of the Council. I'm Eric Sterling. I live at
29 2805 Blaine Drive in Chevy Chase in Council District 5. For the past 20 years, I've been
30 President of the Criminal Justice Policy Foundation, which has been based in Silver
31 Spring for 7 years. I also want to join the members of the public in offering my
32 condolences to the members of the Council on the loss of your member Don Praisner.

33
34 COUNCIL PRESIDENT ANDREWS:

35 Thank you.

36
37 ERIC STERLING:

38 I have a statement that I've submitted, and I will highlight some of the elements. I wanted
39 to note that our foundation gave a grant of \$2,100 to the Montgomery County Police
40 Department to purchase software to assist the police in cataloguing gang graffiti in order
41 to improve the county's prosecution of gang crimes last year. I want to note that as you
42 confront the challenge of preparing the budget, you're going to have to cut long-valued
43 programs. You'll have to choose among our community's priorities, and you have to ask,



February 3, 2009

1 "Is this program effective? Is this program more valuable than programs that we have to
2 cut?" In this situation, some people will come to you, and they say, "No. This program,"
3 whatever it might be--might be law enforcement--"is so important, it must be immune from
4 any kinds of cuts," but that is a fallacy. While the mission of an agency may be critical, I
5 think that you'll find in the activities of an agency, especially one as large as the Police
6 Department, that some of those activities are, upon review, wasteful and unproductive. I
7 should just say parenthetically, I've been a crime victim. My wife's car has been stolen.
8 There's crime in my neighborhood. Like everyone, we want to live and work in a safe
9 neighborhood. I'll note that the Police Department budget is \$241 million for fiscal year
10 2009, that the Police Department, in its budget to you, identifies various factors to
11 measure its performance. I think those factors are utterly insufficient to guide the public in
12 terms of how the Police Department is carrying out its job. It doesn't mention, for example,
13 the arrests it conducts, and the 15,358 arrests in 2007 are an important measure of what
14 they did, and I come to you to note that of those arrests, 1,445, or 9.4% of the total, were
15 for the offense of simple possession of marijuana. That was the largest category of arrests
16 other than for driving while under the influence. This kind of effort, 9% of their effort going
17 into this area, is a distraction from the investigation of other more serious crimes, and if
18 you look at the attachment in my material on page one, the first attachment notes that for
19 almost all of the kinds of crimes that are reported in the county, the Police Department
20 arrests only a small fraction of those crimes, for example, in the case of robbery--I'll
21 conclude--almost 1,200 robberies reported but only 460 arrests.

22
23 COUNCIL PRESIDENT ANDREWS:

24 OK. Thank you, and we'll read the rest of your testimony. Appreciate the research you've
25 done on that. Thank you for being here, and...

26
27 JOSEPH SANDLER:

28 My pleasure.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Our next speaker is Esther Kravitz, speaking for NAMI of Montgomery County.

32
33 ESTHER KRAVITZ:

34 Good afternoon, everyone. My name is Esther Kaleko-Kravitz and I'm the executive
35 director of NAMI, the National Alliance on Mental Illness of Montgomery County. Before I
36 begin, I just want to point out as evidenced by the testimony that Mr. Sandberg gave--
37 Sandler gave of the Jewish Community Relations Council, that serious mental illnesses
38 were not mentioned at all as a population they serve. So I will tell you that serious mental
39 illness is a problem that is not served adequately anywhere, whether it's from there or
40 from anywhere else. I would like to imagine a world where there are no homeless people
41 with mental illness wandering the streets, where the jails are not filled with inmates who
42 have serious mental illnesses, or people without insurance or on Medicaid could get
43 timely, excellent services even though they don't have the money. Where there would be



February 3, 2009

1 enough affordable housing for people with serious mental illnesses to live, either on their
2 own or in groups. Where diagnoses would be treated appropriately for all. Where there is
3 no stigma about people with mental illness, and where individuals and families can afford
4 their medications. Am I asking for a miracle or are many of these issues solvable with the
5 proper integrated community services? If funding is cut for these services, even the
6 baseline that we can barely hold on to now would be threatened. We at NAMI
7 Montgomery County offer free evidence-based courses such as Family to Family in
8 English and Spanish; Peer to Peer, a course for consumers, to help with their recovery; In
9 Our Own Voice, an interactive video presentation to destigmatize mental illness in the
10 community; and more. These courses have been studied and are proven to help
11 individuals with serious mental illnesses and their families or caregivers improve their lot
12 in life. It is important that the county council and the county executive do not allow funding
13 to the mental health community to be cut. I would urge all of you to negotiate about budget
14 reductions in a systematic way to communicate with public and private systems about
15 such cuts. We have been receiving more calls since the economic downturn as financial
16 problems, foreclosures, lost jobs cause a great deal of anxiety in people which often
17 triggers more serious mental illnesses. Please focus on the fact that evidence-based
18 programs bring a great deal of positive to the good--to the participants and it's been
19 proven. There should be no consideration of cutting these programs that bring positive
20 results to the consumers, their families, and the county at large. As an organization, we
21 will try to look internally for ways of addressing cuts. We do not know the extensive
22 information that is needed to suggest systemwide cuts for other public or private
23 institutions, but we are a member of a safety net coalition whose priority is to protect the
24 most vulnerable Montgomery County residents by prioritizing and holding harmless safety
25 net services. I'm aware that difficult decisions--budget decisions--need to be made, and I
26 hope that programs for the most vulnerable people in the county, the mentally ill, will be
27 the last to be cut, as these people are the most defenseless. Thank you.

28
29 COUNCIL PRESIDENT ANDREWS:

30 Thank you. Our final speaker this afternoon is Kevin Rhea. Good afternoon.

31
32 KEVIN RHEA:

33 Good afternoon, Councilmembers. My name is Kevin Rhea and I'm here as an advocate
34 of addiction treatment services, and I would just like to talk to you briefly on a couple of
35 points here, specifically or key to how the county can--can actually save money in
36 addressing addiction treatment services. In a survey done in 1994, it was found that for
37 every dollar spent on treatment, \$7.00 is saved. OK? Taxpayers saved \$7.00 in crime-
38 related costs. With treatment, even hard-to-reach populations reduce illegal drug use
39 nearly in half. Further, additional--addiction treatment reduces criminal activity by 80%.
40 OK? So if we talk about the results of treatment and when happens when treatment is
41 successful, what are we actually getting? We're reducing criminal activity. We're saving
42 the taxpayer money on--on criminal and jail costs and court costs and the whole process.
43 We're also creating taxpayers. We're putting people back to work, creating taxpayers and



February 3, 2009

1 not creating a drain on the economy. And we're also putting people back into a self-
2 supporting situation rather than having to depend on the county for medical, financial, and
3 shelter assistance. It's also been proven that in history, the majority of police chiefs rate
4 drug abuse as an extremely serious problem in their communities, and the majority of
5 police chiefs believe overwhelmingly that law enforcement has been unsuccessful in
6 reducing the drug problem. It is my belief that trying to address the drug problem can
7 really only be achieved through treatment. Thank you.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Thank you very much. We've got a couple of councilmembers who have questions.
11 Council Vice President Berliner and Councilmember Trachtenberg.

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 I don't have a question. I just wanted to thank the panel and just make one observation.
15 I've only been on the council 2 years, but I believe that your coalition--this is the first time
16 that I have seen the coalition in the county with respect to this kind of safety net coalition,
17 and I want to commend you for forming it. I believe my colleagues and I are as committed
18 as we know how to be with respect to ensuring that our safety net is as strong as it can
19 be, and I and my colleagues look forward to working with you in a collaborative manner to
20 see how we can get through this period of time with that safety net intact, so thank you for
21 your efforts.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Thank you. Councilmember Trachtenberg.

25
26 COUNCILMEMBER TRACHTENBERG:

27 Thank you, Council President Andrews. I want to thank all of you for being here this
28 afternoon and I have found the testimony provided quite enlightening, perhaps some more
29 exotic than others. But I have 2 questions. But, again, I want to thank all of you for being
30 here because you all make very important points about investments and investments of
31 resources that are clearly declining. Esther, I very much appreciated your testimony, and I
32 wondered if you could offer a comment about the focus which has developed in the last
33 few months on prioritizing evidence-based practices. I know the department is working
34 very closely with a number of our larger nonprofits to try to develop a report card system,
35 but that is a conversation that's near and dear to my heart because I tend to think that in a
36 difficult climate like this, we are going to have to prioritize investments, certainly around
37 behavioral health. They should be around things that we know work and not necessarily
38 things that make us feel better. I don't think we have that luxury right now. So I wondered
39 if you could talk a little bit about what's going on with the department in that regard.

40
41 ESTHER KRAVITZ:

42 Well, what we have found is that we do collaborative work through NAMI Montgomery
43 County, through NAMI National, which is our national office, which is in Arlington. But we



February 3, 2009

1 are collaborating with the University of Maryland, who are--who have done an entire 3-
2 year study on making sure that programs that we offer are evidence-based. And when
3 that happens, programs seem to be more--well, they're more sure to succeed because
4 people have tested them, gone over them, analyzed them, and can see the differences
5 that have come about as a result of the research that they have done. So I think putting
6 programs that have research attached to them, you know, on the table, and trying not to
7 cut them is very important, because oftentimes, you have programs that you know very
8 little about the outcomes, and there's no report card on them, and so therefore, yes, it may
9 sound good and it may have a great premise, but it doesn't always work. So having things
10 where you can back it up with statistics is a big help in terms of analyzing programs.
11

12 COUNCILMEMBER TRACHTENBERG:

13 Mm-hmm. OK, I appreciate that, Esther, very much, and I look forward to seeing the
14 report card. Now to Mr. Sterling, who came this afternoon with what I would call thought-
15 provoking testimony. I'm really quite surprised with the written testimony that you've
16 provided that almost 10% of all the arrests by our police department in this county are for
17 the offense of marijuana possession. One question I would ask you in terms of the
18 number--the percent that you're quoting here, how is this categorized? In other words, is
19 that arrest-- charge the serious--the more serious one or is this a duplication? I want to be
20 clear about it.
21

22 ERIC STERLING:

23 This is data that is compiled and presented to the Maryland State Police and then
24 becomes the basis for the uniform crime reports prepared by the FBI and is developed
25 according to the standards that the FBI has. The arrests follow what the FBI calls the
26 hierarchy rule. The hierarchy is that an arrest that involves multiple offenses is only
27 identified for the most serious arrest--the most serious offense according to their
28 hierarchy. So these marijuana arrests would not include cases where people had been
29 charged with burglary and they had marijuana on them at the time they were arrested.
30 These would not include cases of aggravated assault and they had marijuana in their
31 possession at the time. These would be--this would be the most serious offense at the
32 time of the arrest, is the simple possession of marijuana.
33

34 COUNCILMEMBER TRACHTENBERG:

35 I appreciate that response. I wonder if, Mr. Sterling, you could talk a little bit about what
36 the investment needs to be in this. I went through your written statement and on page 3,
37 you reference the fact that there's a significant investment around officer time because of
38 court appearances in particular. In other words, the cost of processing these arrests is
39 clearly significant, and I certainly think that's something to think about, especially at a time
40 when we are having difficulty holding the line over 100 slots in our adult drug court and 20
41 slots in our juvenile drug court. I wondered if you wanted to talk a little bit about that--that
42 continuum.
43



February 3, 2009

ERIC STERLING:

Thank you for the question. Essentially, it's this--that when these arrests take place, it means the officers leave patrol. If the arrest is made near the end of the shift, the officer is going to then be overtime in processing the case, taking the suspect to the detention center, waiting till the processing is complete at the detention center. There are the costs, of course, then, to the Department of Corrections and Rehabilitation in the booking of the arrestee and the processing of the arrestee. There are, then, numerous costs not directly to the county but to the state in the prosecution by the state's attorney's office, the assignment of public defender, and the costs to the court, the court personnel, and so on at the district court. The--those, of course, do not include the costs to the private individual who's been arrested. The--in the--as the cases are listed, it's my understanding that every time a case is listed, the police officers, of course, are required by the state's attorney to be present if their testimony is required and that--my understanding is that they get an automatic 3 hours of overtime when they show up for such cases, whether or not their testimony is going to be required, so that very quickly, if you have a single officer involved and you have just 2 appearances at 6 hours at overtime, that's like 9 hours of regular pay, so you already have in just a connection, you have, like, one officer on a whole shift in terms of salary covering a single kind of this--a single instance where you have a court case involved. If the case involved a request for backup, then there are multiple officers who have responded, all of them are witnesses, so all of them are also getting overtime pay, so the costs quickly escalate. Instead of making the arrests, the police department could issue citations. They could issue summons. They don't have to engage in that. You don't have the power to change the penalty. The courts were not-- that's not the proposal. It's a question of how the police department manages their very precious resources to provide public safety. If we're concerned about the substance abuse problem in the county, these arrests are in no way contributing to a reduction of that problem. The arrests have been going up steadily but they're not having an effect upon the rates of use. I have data from the federal statistics and monitoring the future data in terms of the nationwide comparison of how much use is taking place compared to the steady national increase in these arrests. If we are concerned about a comprehensive approach, the comment of the gentleman at the end of the table, the most important thing we should do is to spend the money on drug treatment, directly on the people who have substance abuse problems. Those are the people who suffer the most. Those will have the biggest impact in the reduction of crime, not the arrest of people for the simple possession of marijuana. Other kinds of things that need to be done are to make sure that programs for youth are maintained so that youth have activities after school, making sure that, of course, that our schools are, you know, engage our youth so that they're not turned off and alienated. Providing communication skills to parents so that they can talk to their children so the children have outreach. These, again, are very, very important kinds of programs. To put these expensive resources of the police department, where 9% of their output in arrests have a quarter-billion-dollar appropriation, that's a waste of money.

COUNCILMEMBER TRACHTENBERG:



February 3, 2009

1 No, I--I hear what you're saying. I've heard the argument made before at different
2 conferences which I've had the privilege of attending. I would note for the council
3 president that I'd actually like to see if we could have a follow-up conversation with the
4 police department about this just because I think it really is worth pursuing, and I also
5 would ask Mr. Sterling perhaps, if you wouldn't mind, if you could point us to whatever
6 literature--studies have been done that are out there where there's a comparison made
7 between investments, say, for treatment rather than enforcement. I do know that there are
8 a number of states and localities that have changed policy because of the growing
9 discussion.

10
11 ERIC STERLING:

12 There's a very large body of literature...

13
14 COUNCILMEMBER TRACHTENBERG:

15 If you could--yeah, if you could direct us to it, I'd appreciate it. Thank you very much.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Thank you. And I think that's it for questions here. I just want to add that I appreciate
19 everybody coming out. The county executive has asked all of the departments to come up
20 with proposed cuts in their budget ranging from 5% to 10%, 5% for public safety and
21 health and human service agencies and 10% for other departments. So every department
22 is going to get a lot of scrutiny. A 5% cut in the police budget would be \$12 million from
23 the \$241 million. So the chief is, I know, looking hard for different options and may have
24 already submitted some, but I'm sure they're considering others, and we will, too. Although
25 we can all point to departments that are essential, I think we also have to recognize that in
26 every essential department, there are programs that are not necessarily essential, and we
27 have to get past, you know, locking off entire departments from rigorous scrutiny, and
28 even services that are essential may be better performed and more efficiently done. I
29 would say that while I really think it is important to look at where the police department is
30 focusing its efforts in terms of arrests, I wouldn't want people to think that 9% of arrests is
31 9% of the budget, you know.

32
33 ERIC STERLING. No. No. That was not what I was trying to suggest.

34
35 COUNCIL PRESIDENT ANDREWS:

36 But I very much am interested in looking at better ways to spend money in every
37 department so that we achieve our goals of a safe community most efficiently and in a
38 long-term way that's cost-effective as well. So, thank you for the good research. I will--we'll
39 look at your--and we'll do a--look at it and we'll do a follow-up public safety session with
40 the police department on their--how they allocate resources in that way. And we have
41 another section on this same subject tonight, where we're scheduled to have 13 speakers.
42 I see that Mr. Rhea was signed up for tonight, so since we've heard from you now, you're
43 welcome to attend tonight, but--but not in a speaking role tonight, because we'll have



February 3, 2009

1 already had the benefit of your--your thoughts, and thank you for--for them. And thank you
2 all and have a good afternoon.

3
4 ERIC STERLING:

5 Council president, thank you. Thank you, members of the council.

6
7 COUNCIL PRESIDENT ANDREWS:

8 OK. All right. Now we're going to have a--a 10- or 15-minute session that we brought to
9 the council's attention today because we were the benefit of it yesterday in the MFP
10 committee on economic indicators. And I think it's important the council--the chair of the
11 MFP committee, Councilmember Trachtenberg and I, both thought this was a good thing
12 for the full council to have the benefit of. And so we have David Platt, our county
13 economist, and other representatives from the finance department here to give us a-- a
14 brief briefing on economic indicators. And then we will move into a discussion on the
15 spending affordability guidelines for the FY10 capital budget and other general CIP
16 assumptions. So, Mr. Platt, how are you doing?

17
18 DAVID PLATT:

19 Ah. Good afternoon, Mr. President.

20
21 COUNCIL PRESIDENT ANDREWS:

22 All right. Let's all calm down a little bit. We need to keep moving along here. OK. And--go
23 ahead and introduce yourself for the people watching, listening in.

24
25 DAVID PLATT:

26 David Platt, chief economist, Department of Finance.

27
28 ROB HAGEDOORN:

29 Rob Hagedoorn, Department of Finance.

30
31 JENNIFER BARRETT:

32 Jennifer Barrett, Department of Finance.

33
34 COUNCIL PRESIDENT ANDREWS:

35 OK. Good to see you all. OK.

36
37 DAVID PLATT:

38 Well, President Andrews has talked about our presentation yesterday, and we're gonna go
39 through this presentation in a--in a form of update on some of the economic indicators,
40 both on the national, regional, and county levels, so some of the slides that are presented
41 in your packet I'm going to skip over and just go through the highlights of the--salient
42 points that are, I think, important for the council to-- to review, but you certainly may ask
43 questions about anything that's in the packet. Let me begin with the first slide if I may.



February 3, 2009

1 Thank you. Focus on the GDP. This is basically data that we track, and we also track the
2 survey of the "Wall Street Journal," and the last survey they did was early January. Of
3 course, on Friday, the Bureau of Economic Analysis reported that the fourth-quarter GDP
4 dropped instead of the 4.3% that you see there in the hatch bar, it was 3.8%. And based
5 on that survey, they expect the next 2 quarters to show negative growth, which will bring
6 the recession, if those numbers come to fruition for a year and a half, which will probably
7 make it one of the longest recessions since the thirties. Next slide, please. No surprise
8 here--the stock market has been in terrible shape, and most of that downslide has been
9 during the fourth quarter of 2008. We see the numbers here reflected in-- annual
10 numbers. Those numbers represent probably the lowest drop in both the S&P 500 and
11 Dow Jones' national average since 1933. I also want to quickly bring up to date the
12 councilmembers on January numbers, because they were not optimistic, either. In fact,
13 the Dow Jones Industrial Average has climbed 8.8%, which is the largest monthly January
14 drop-- for the month of January drop in 113 years. Same with the S&P 500. It was a
15 historical drop... I believe it was about 8.4%. So, anyway, the stock market certainly has
16 not recovered, and the point about the January numbers is that usually it's been a
17 precursor for the rest of the year, so that when we see a decline like this magnitude, we
18 probably are not gonna see a rather healthy growth in the stock market. And, again, we'll
19 talk about capital gains a little bit later in the presentation. I would like to go through the
20 next 2 slides rather briefly. This is the inventory or the overhang of housing inventories at
21 the national level. And we can see that the inventory has grown both for the new home
22 sales and for existing home sales. On the next slide, the same pattern is that we have a
23 high inventory of homes for sale out there at the national level. I'll also, later on in the
24 presentation, show you what Montgomery County looks like, and the pattern is not that
25 much different. So, overall, the housing market still has a way to go, both in terms of
26 sales, in order to get back to some sort of normal inventory level, about 3 or 4 months'
27 inventory. We're now running about 11 months' supply at the national level and similar
28 numbers at the county level. The--as everyone probably recollects, the Federal Reserve
29 did a dramatic cut in the fed funds rate in December down to about 0% to 2.25%. And the
30 expectation in the futures market is that will probably hold steady through the rest of the
31 first half of this calendar year. Possibly we're not looking at any--or at least the futures
32 market's not looking for any increase until probably the fourth quarter of 2009, and if it is
33 an increase, it's going to be very modest. I believe on the next 2 slides, if the
34 councilmembers wouldn't mind, I'd like to skip over those two. There--there's a narrative in
35 the packet presented by Mr. Farber about the--the leading indicator and composite. What I
36 would like to focus in, really, is the payroll employment. This is for the region, and
37 basically those numbers go up through November, and we've got--last week, the Bureau
38 of Labor Statistics put out new numbers for December, and those numbers reflect a little
39 bit of a difference. For example, there it says 31,000 jobs were for the first 11 months of
40 2008. That number's reduced a little bit to a little over 29,000. That increased the split both
41 between the private sector-- again, we're talking about the Washington metropolitan
42 region-- 50% between the private sector and 50% in government jobs. So that's an
43 increase of about 1% over 2007 for the metropolitan region. The next slide, please. This is



February 3, 2009

1 for the Montgomery and Frederick Counties. When you take the metropolitan area, divide
2 it into 2 divisions, and we're fortunate enough to have our division broken out from the rest
3 of the metropolitan area with Frederick County--that shows that--we've shown about 2,400
4 jobs were added in 2008. That was through November. The latest data suggests that that
5 is about 1,800 jobs. Most of that is at the government level. Very little job growth in the
6 private sector. In fact, there may even have been a decline over 2007 in the private sector
7 jobs. So overall, employment only grew 4/10 of a percent. Next slide, please. I referred
8 earlier about the overhanging inventory. We also tracked the Case-Shiller index, and they
9 also provided an index not only at the national level but the regional level. And in
10 November, they brought--the index for November came out last Tuesday, in fact, a week
11 ago, and that showed a 19.4% decline in the sales price for the region. That is the biggest
12 drop that we've seen in that index. That's a year-over-year drop. Not a month-over-month,
13 but a year-over-year drop. That suggests with the futures market--on the clear bar-- we'll
14 continue to see a decrease in home sales but a decel-- decelerating rate through most of
15 2009. So, again, until the overhang of that--of the inventory, which I'll show in a minute, is
16 reduced, we'll probably see some further price decreases the rest of this year. Consumer
17 price index. Again, for November, it declined-- it only increased 2.5%. Again, it was the
18 lowest increase since March of '04 and that's due to the gasoline prices, the big drop. The
19 core, which is the hatch bar, shows a little modest decrease but not significant. So we
20 expect probably for the year over year that inflation will run probably about 4.9%.
21 However, we won't get the final number on that until later on this month, because that will
22 be the final index for 2008. Earlier, I talked about the employment for the region, both the
23 division and for the metropolitan statistical area. This is based on another series, which is--
24 the prior series was based on payroll employment. This is based on a survey of
25 households, what we call the labor force series. And this shows that the fact that the
26 Montgomery County increased by less than 420 jobs for the first 11 months of 2008. On
27 Friday, the Department of Labor and Licensing of the State of Maryland released their
28 December report, and that showed-- and I'll talk about the employment rate--
29 unemployment rate in a minute, but based on that data, we did an average for the full year
30 and it's hardly-- basically no employment growth based on this series in 2008 over 2007.
31 And when we looked at the 2007 number compared to the 2006 number, there was no
32 employment growth. What it did show, however, when we talk about the unemployment
33 rate in a minute, unemployment, the number of unemployed increased from 12,000 to
34 19,000 in December over December. So that was a 7,000 increase in the number of
35 unemployed in the month of December of '08 compared to December of '07. This shows
36 you the unemployment rates, and November was 3.7, but the data that was released on
37 Friday showed the unemployment rate increased to 3.9% for the county. That's not a
38 seasonally adjusted--it's a non-seasonally adjusted number. In November 2005 and
39 December, it was about 2.5. So there was a significant increase in the unemployment rate
40 in the county. Even though the press will say that we have the lowest unemployment rate
41 in the state compared--with Howard County, the fact of the matter is it's simply increasing
42 by 1.2 percentage points, 1.3 percentage points. And that will have an effect on the
43 income later on when we look at our income tax revenues. Next slide, please. Go ahead.



February 3, 2009

JENNIFER BARRETT:

Before we go forward, though, can we focus on what that translates in number of jobs? Is that extra 1.2% increase in the unemployment rate? We went from 12,000 unemployed at the end of December 2007 to 19,000 in December 2008. That's--that-- 6,000 to 7,000 more people unemployed, needing services, unable to pay their mortgages, utility bills, all of those pressures that are coming on the county government, both with revenue loss and increased demand for services, and we've really focused on that, and are feeling it in our Department of Health and Human Services and Department of Housing and Community Affairs. Sorry?

COUNCIL PRESIDENT ANDREWS:

Let me ask you to finish your presentation to my colleagues. We'll have ample opportunity for questions.

DAVID PLATT:

Next series of slides. We'll talk about the housing market. This shows you that the number of home sales-- these are existing home sales-- declined 20.6% in 2008, and it follows almost the same declines in 2007 and 2006. Again, that 8,228 number is a preliminary number but it's based on monthly averages. Next slide, please. While those prior years, the home sales were declining at 20% rates, home sale average prices were increasing modestly between 4.4% in '06 to 3.9% in '07. However, in '08, they declined 7.9%, and most of that decline occurred during the second half of '08. There was a little bit of a price depreciation during the first half of '08, but then all of a sudden, starting in July, the prices started to climb by double digits. Earlier, I referred to the overhang in the housing supply. This shows you the data from Montgomery County. And again we see significant increases starting in '08, at least through '07 through '08, and now all of a sudden, we saw a decline. But still, the overhang is over 6 months' supply. And a lot of people have taken-- we're understanding, looking at the listings data, that the sales--the listings that come off, people have taken their house off the market for sales. That brings the inventory down a little bit. So we may see once the market picks up that those listings will increase. Because of the decline in the home prices that we show for 2008, this is the reassessment rate for Group 3. Residential property assessments for Group 3 based on the data from SDAT declined 16.3% on full cash value. That's not gonna be the taxable assessment. That's based on full cash value. Overall, assessments went down 10%. On the construction, same data, same story. New construction of units are down. 2007, I think, is a little bit of an anomaly because of the growth policy changes, that people came in and decided to get into the permits and the starts early because of the--the rate increases that came on, and that's probably a little bit of a bump there, but I think that the number of units coming down in the construction circuit continues down because of that overhanging supply. On the non-residential construction, there's a lot of volatility here. We see the number of projects declining. We saw the big bump-up in new construction value, and that's due to 2 health and hospital projects, one in Olney and the other one, I believe is in



February 3, 2009

1 Shady Grove. OK? OK. Vacancy rates continuing, reaching the highest level since the first
2 quarter of 2005. We're at about 9.7% right now with--again, which indicated there'll be a
3 slowdown in the construction because of that high vacancy rate. And this is in Class A
4 property. In summary, alluded to the--talked about the employment, the real estate
5 market, construction. I do want to draw your attention to the last bullet, which is--the data
6 that came out from the State Board of Revenue estimates in their December report about
7 their forecast for the state. And the last sentence talks about the capital gains. They're
8 looking at a 45% drop in capital gains for tax year '08 and a 15% decline in capital gains in
9 '09. And that will be-- that's my presentation.

10
11 COUNCIL PRESIDENT ANDREWS:

12 All right. Thank you very much for the--the briefing and for following up on yesterday in
13 your presentation to the MFP committee. I see Councilmember Elrich has his light on. We
14 need to move fairly quickly into the discussion on spending affordability because of
15 schedules of councilmembers who want to be out of here by 3:30. and I know that we're
16 gonna have some debate over it, or at least some discussion with the executive on it, too,
17 so Councilmember Elrich, go ahead.

18
19 COUNCILMEMBER ELRICH:

20 Any sectoral analysis on who's unemployed, where the 7,000 people came from?
21 Because we-- we saw a similar presentation at COG, and they talked about the 31,000
22 jobs, but they were, at least the person from George Mason who did the presentation said
23 that the dislocation in employment was, you know, more in some sectors, limited sectors,
24 than it was across the board. I wonder whether there's anything local on that.

25
26 DAVID PLATT:

27 President Andrews, Mr. Elrich, we haven't got any data. We can certainly follow up with
28 DLLR, And also, we will be talking with George Mason this month on the data. We're
29 having a meeting, as a matter of fact, with the business panel, and they are participating.
30 And we will--this is one of the highlights about that--the discussion and our meeting is on
31 the employment situation. Along with the real estate market and capital gains, I think that's
32 fair enough, yes, about...

33
34 COUNCILMEMBER ELRICH:

35 And is the--you talked about the decline in the assessments in this round. And obviously,
36 it doesn't translate into necessary change in the tax--or corresponding change in the
37 taxable base. So what is the change that you anticipate in the taxable base? Or will there
38 be no change at all?

39
40 DAVID PLATT:

41 Well, it depends-- we probably haven't run those numbers yet until probably in the next
42 couple weeks on the full taxable base to find the full effect. These numbers came out at
43 the end of December and we've run some preliminary analysis, but I think it's a little



February 3, 2009

1 premature, but I would think because of the homestead tax credit of the 10% still there of
2 about a \$23 billion amount of credit, that will be reduced, so I would suspect, be
3 premature, that we would probably see total assessable bases still going up 10%.

4
5 COUNCILMEMBER ELRICH:

6 So that shouldn't change this year or--

7
8 DAVID PLATT:

9 It will not change this year, and there'll be a slight decline in our estimate, again, a little
10 early, for the next year, and it all depends on that--we talked about the 16% decline for
11 Group 3. Group one gets reassessed, and if that has a similar decline, that could-- that
12 could even lower it even more, because you're gonna see a faster erosion of that
13 homestead tax credit. We're expecting that \$23 billion to be reduced to about \$15 billion to
14 \$14 billion based on data we get from SDAT, and if it decreases further than what we
15 think it will or assume it will decrease at a faster rate, we'll probably see assessments
16 going up probably 3% or 4% after that, and when I say say "after that," the critical year is
17 at 11 or 12. We don't know yet.

18
19 COUNCILMEMBER ELRICH:

20 I guess I'm trying to assess this against people who got increases in the last round
21 because, you know, the talk in the last rounds was of people getting 100%, 120%
22 assessable increases and counting how many years their value--you know, how many
23 years they'd be paying 10% and going up, so 15% has to be played against what the
24 increase was for the--for the round the last time.

25
26 ROB HAGEDOORN:

27 I think it's fair to say what--to reiterate what David said--that the group that just got
28 reassessed, even though their assessment went down 16%, they have sufficient
29 difference between their taxable assessment and their true assessment, that bill--that the
30 assessment bill still go up 10%.

31
32 COUNCILMEMBER ELRICH:

33 OK.

34
35 ROB HAGEDOORN:

36 And the same thing will happen for the second--the group after that and the group after
37 that. That also means that probably after 3 or 4 years, the \$23 billion or \$24 billion of
38 homestead credit is gonna be close to zero.

39
40 COUNCILMEMBER ELRICH:

41 And have you all analyzed what's happening in--in the commercial sector in terms of
42 reassessments? Because their process is somewhat different. Are you seeing activity in



February 3, 2009

1 the assessor's office of people coming in and asking for commercial reassessments, and if
2 so, how much?

3
4 ROB HAGEDOORN:

5 Well, I don't know the--the order of magnitude. I think the assessment went up 6%...

6
7 COUNCILMEMBER ELRICH:

8 6%?

9
10 ROB HAGEDOORN:

11 For this particular group, commercial properties in this particular group went up 6% even
12 though the residential went down 16%. But we have heard from SDAT that there was an
13 increase in the number of appeals.

14
15 COUNCILMEMBER ELRICH:

16 And you won't know the impact until--

17
18 ROB HAGEDOORN:

19 We don't know that yet. That's being reviewed now. Because there's a 45-day window to--
20 to appeal an assessment. So that takes you into the middle of February and then they
21 have to go through the appeal processing--process.

22
23 COUNCILMEMBER ELRICH:

24 OK. Thank you.

25
26 ROB HAGEDOORN:

27 Thank you.

28
29 COUNCIL PRESIDENT ANDREWS:

30 So the trend we're seeing is a leveling off, and if the trend continues of decrease in
31 assessed value, as people's homestead tax credit gets used up and they're paying full
32 assessed value, you'll see a flattening of property tax revenues, and that will have even
33 more impact if trends continue on municipalities, because they're more dependent--78%
34 of revenue, I think, on property taxes, so that's something that they need to be especially
35 watching out for and planning for, too. OK, Councilmember Floreen, then Councilmember
36 Ervin and--go ahead.

37
38 COUNCILMEMBER FLOREEN:

39 Thank you. Well, quickly, the capital gains numbers really--well, we all--anyone who's
40 opened their mail recently would see this. But decreasing capital gains is extraordinary. A
41 lot of that's coming from Montgomery County, is it not? So are we in a position yet to
42 adjust our estimates from the fall with respect to what kind of budget we're looking at?
43 Last fall, well, in December, you told us we could anticipate \$100 million less in revenue.



February 3, 2009

1 This is how I think of it. \$100,000--\$100 million less in revenue than we were currently
2 receiving for this year. For next year's budget. Do you think it's gonna be worse than that,
3 then, given these numbers?
4

5 JENNIFER BARRETT:

6 We don't have an answer yet. We are working on it. We have had some internal
7 discussions about the impacts of what happened last fall. The February distribution is
8 gonna be key, and that's why the timing is as it is, because we get that February
9 distribution, we analyze that, and it's right at the time that we're producing the executive's
10 budget, so that's when you're really gonna get a good feel for our projections updated for--
11

12 COUNCILMEMBER FLOREEN:

13 So you-- so you'll have--
14

15 JENNIFER BARRETT:

16 Not good news, no.
17

18 COUNCILMEMBER FLOREEN:

19 Right. And it's--nothing here is good...
20

21 JENNIFER BARRETT:

22 I'm sorry. One thing I said in MFP is that the--the update that we gave you in September,
23 you may recall, was based--and we had cranked back some of the revenue estimates--but
24 they were based only on indicator data. Then in November, we gave you another update
25 that was a combination of indicator data that we had plus some actual receipts. Now we
26 have the state indicator data, which is negative. We'll be combining and analyzing this
27 data, which is negative, clearly, but waiting to see what the distributions are to try to
28 process that into the revised estimates...
29

30 COUNCILMEMBER FLOREEN:

31 OK, so you just can't say at this time how much worse it is. OK. Thank you.
32

33 COUNCIL PRESIDENT ANDREWS:

34 OK. Councilmember Ervin.
35

36 COUNCILMEMBER ERVIN:

37 Thank you very much. Ms. Barrett, yesterday at MFP, you raised some really interesting
38 points regarding unemployment, the unemployment figures, and I was just curious as to
39 whether or not we're gonna be able to look at what you brought up yesterday in MFP, and
40 that is underemployment statistics, and how would you be able to get those, and I think
41 those would be useful to the conversation as well as those numbers of people who are
42 losing their second jobs. We--we sort of briefly talked about that in MFP.
43



February 3, 2009

1 JENNIFER BARRETT:

2 I remember you brought up underemployment and second jobs. I don't know...

4 DAVID PLATT:

5 Losing a second job. That's right.

7 COUNCILMEMBER ERVIN:

8 I think that--

10 JENNIFER BARRETT:

11 ...sources of data--I'm sorry. I'm turning to my colleagues--is there any sources of data
12 that can help us...

14 DAVID PLATT:

15 Probably we have some data on that, but it might be dated. I think the fact of the matter
16 is... I'm sorry. When the December numbers came out, that was on the household survey,
17 so we have to look both at the payroll data and the household data. That would give us
18 the number of underemployed, the household data, and since that just came out, we're
19 gonna talk to DLLR and see if they've done any survey on these special numbers. Also,
20 we'll check with BLS, the Bureau of Labor Statistics, U.S. Department of Commerce, who
21 do special studies. Now, that'd be more at the national level, but that would still give us a
22 trend about the underemployed.

24 COUNCILMEMBER ERVIN:

25 OK. Thank you.

27 COUNCIL PRESIDENT ANDREWS:

28 OK.

30 ROB HAGEDOORN:

31 And if I--if I may add, if you remember, there were 2 graphs. One of them dealt with
32 payroll employment, and the other one dealt with--was just based on the unemployment,
33 and the other one is based on resident employment. You can see somewhat of a different
34 trend in it. The one that's covered by the unemployment insurance, if a person has two
35 jobs, they're counted twice under the payroll because they have two jobs. And on the
36 resident employment, you count it only once. So you can see some trends indicated there
37 where you may see some people shifting from one job to two jobs. So somewhat of an
38 indication of underemployment.

40 COUNCIL PRESIDENT ANDREWS:

41 All right. If the questions or comments can wait until--or be incorporated into comments
42 about the spending affordability issue, we want to--we need to get to that, and we can



February 3, 2009

1 continue this--they'll be here. We can continue with more questions after the spending
2 affordability unless it's something that needs to be addressed before.

3
4 COUNCILMEMBER KNAPP:

5 Just a quick question for David. We-- we get the February distribution when?

6
7 DAVID PLATT:

8 Around February 18, 19.

9
10 COUNCILMEMBER KNAPP:

11 And your analysis of that is completed when?

12
13 DAVID PLATT:

14 A few days right after that.

15
16 COUNCILMEMBER KNAPP:

17 So could we get a copy of that before-- of that assessment before we have to see it in the
18 budget distribu--the budget packet so we can actually get a sense of what...

19
20 JENNIFER BARRETT:

21 We'll find a way to get you a heads-up on this.

22
23 COUNCIL PRESIDENT ANDREWS:

24 OK. Very good. Thank you. And that's a good segue--Councilmember Trachtenberg can
25 lead us through the discussion on spending affordability, and Tim Firestine is here as well
26 to join us for that discussion. Glenn Orlin of our staff as well.

27
28 COUNCILMEMBER TRACHTENBERG:

29 OK, well, I'm gonna keep saying it-- MFP is where all the action is. I had suggested to the
30 Council President that we have that presentation because I thought it was so critical. I was
31 particularly interested, and I know my colleagues on the committee were very interested in
32 the job situation and the change there, and clearly the state revenues, which David spoke
33 to. And I was gonna suggest to the Council President that as we go forward and we get
34 these updates that we continue to go through them within the committee structure but we
35 actually also back that up with a presentation here before the full council, because I think
36 it would be wise for us to be monitoring what activity is going on out there around-- around
37 revenues. It's so related to the decisions we need to be making here over the next few
38 weeks. Yesterday afternoon, we met to discuss the spending affordability guidelines for
39 the FY10 capital budget, and after a lengthy discussion, there were a set of
40 recommendations agreed to, not all unanimously, and I'm gonna go through them. There
41 was a separate addendum that was prepared by Dr. Orlin to today's packet. I assume
42 everyone here on the dais has it. In terms of the first recommendation, myself and the
43 Council President would recommend retaining the current G.O. bond guidelines and



February 3, 2009

1 targets. Again, that would be \$300 million per year and \$1.8 billion for FY09 through year
2 2014. Councilmember Ervin recommended a supporting staff's recommendation, which
3 would be raising the FY09 and '10 G.O. bond guidelines by \$30 million to \$330, and
4 retaining the FY11 through '14 targets at 300 million. Again, raising the 6-year guideline to
5 \$1.86 billion, which would be a 3.3% increase. I'm sure there's gonna be a lot of dialogue
6 over the next few minutes about this, but I just wanted to put my perspective down on the
7 table at the onset, which the Council President agreed to. Again, I'm sure that
8 Councilmember Ervin is going to ably represent her position on it, but, you know, it would
9 seem to me that it would be important to hold the line right now because of the fiscal crisis
10 that we're in, and in my mind it wouldn't be the right time to commit to more--to more
11 spending. I think we're gonna have to evaluate the real impact of any federal stimulus
12 package and really what that means to us here in Montgomery County. That's still not
13 abundantly clear. A lot of things are being bandied about in conversation, but the true
14 benefit has not been isolated just yet. And I think we're also clearly gonna have another
15 opportunity during the budget process to really adjust the guideline if we actually need to
16 do that. We have done that before. I would call attention to my colleagues a memo which
17 was provided just a little while ago from the county executive on these guidelines, and the
18 third paragraph of Mr. Leggett's memo, last sentence--and I'm gonna read this for the
19 record--I think this is another reason why we need to be looking at this in a very cautious
20 way. And at a time when we may need to present to the rating agencies our need to make
21 adjustments, and let's be frank that that might be the case, we might have to make
22 adjustments to some of our prior obligations such as eliminating PAYGO or cutting our
23 retiree health contributions. The issuance above the planned debt levels would be viewed
24 as inconsistent with other actions, and I just want to put that thought out on the table. In
25 terms of adjusting revenue estimates, there was a unanimous consensus of the
26 committee that we would go ahead and adjust the estimates again for the recordation tax
27 increment by \$5.1 million in FY09 and \$6.6 million in FY10. And that would bring us to \$20
28 million each year. There's a typo in the packet, and just want to make sure that everyone
29 understands it's not 10, it's actually 20.

30
31 COUNCIL PRESIDENT ANDREWS:

32 You're adjusting them down.

33
34 COUNCILMEMBER TRACHTENBERG:

35 Exactly. The committee unanimously recommends reducing the revenue estimate for the
36 school impact tax by \$6,226,000 in FY09 and \$8,243,000 in FY10. Again, that would bring
37 us to \$11 million each year. And the committee unanimously recommended reducing the
38 revenue estimate for the transportation impact tax by \$12,796,000 in FY09 and
39 \$3,223,000 in FY10, and that would bring us to \$7 million in FY09 and \$10 million in
40 FY10. And the committee unanimously recommended concurring with the executive on
41 the implementation rates, the inflation rates, PAYGO, the recordation tax county
42 increment, G.O. bond set-asides, the state school construction aid, the current revenue,
43 and park and planning bonds. And I know that Dr. Orlin is sitting before me, so if folks



February 3, 2009

1 have questions on any of that, I'm gonna let Glenn walk you through it, but I think most of
2 it is relatively straightforward. So those are the recommendations of the MFP committee,
3 which met yesterday, and its...

4
5 COUNCIL PRESIDENT ANDREWS:

6 Thank you, Chair Trachtenberg. I just have this sixth sense that CAO Tim Firestine wants
7 to say something, so first I will turn to you and then I will turn to Councilmember Ervin and
8 Councilmember Knapp and Councilmember Elrich.

9
10 TIM FIRESTINE:

11 Thank you. I think Councilmember Trachtenberg did make the comments that we would
12 make, and I'd like to just add a little bit to that. We did cover this in the memo. The county
13 executive is absolutely concerned about any action to increase the debt guideline at this
14 point in time. He's opposed to any increase, and I'll outline a few additional reasons here
15 in a minute, but mostly it sends the wrong message in this fiscal climate. There's another
16 point in our memo that highlights the pressure that we already have from the existing
17 guidelines that are in the CIP. For FY10, there's a 6% growth requirement at the \$300
18 million level. Requires \$13 million more that we have to find within that budget, within a
19 tight budget. Adds another 11% or \$24 million in FY11, and at this point, we don't see that
20 FY11 is gonna be an easy year to--to balance. So over the two years, we need \$50 million
21 more just to meet \$300 million that is in the existing guidelines. We can't afford to add to
22 that burden. As you know, we are trying to deal with this continuing fiscal uncertainty that
23 is out there. David did an excellent presentation that highlights the uncertainty. There is a
24 lot more to come in terms of bad news to this county. We're struggling over and over to
25 fund programs and services. We tried to present to you a plan for this year to save money
26 so that we can fund next year's operating budget. We're working hard now to pull together
27 a budget that closes the remaining \$450 million gap. As you know, we're in talks with the
28 unions to try to reopen and adjust compensation in those contracts to save money in the
29 next year budget to close the gap. So we are looking at every option that we have. Any
30 and all options that are out there to close the gap. Increasing the guideline throws another
31 at least \$3 million into the problem, but over the next two years, it adds \$10 million to the
32 problem. I think the point that Councilmember Trachtenberg made is especially important.
33 We have some things that we're gonna have to look at to balance this budget, which
34 requires us to modify our policies. We've already made a recommendation to eliminate
35 PAYGO from the--the capital budget. There are other places we are looking where we
36 have made long-term obligations where I believe, in the operating budget, we're gonna
37 make some significant recommendations to perhaps slow down our ability to meet that
38 commitment. So at the same time we're doing that, we would have to say to, I think not
39 just the rating agencies but to others that we're gonna ignore those obligations or try to
40 have some flexibility in those obligations or we're gonna add to the local debt burden.
41 We're gonna increase the bill that you're gonna have to pay for this. And then finally, my
42 last point, I know we're all looking for the federal stimulus as the savior of everybody's
43 budget, but quite frankly, we had a great meeting this morning with staff from all the



February 3, 2009

1 agencies of the government. It's a very complicated legislative proposal that's out there,
2 but I have to say, there are a lot of opportunities. We're gonna work hard to bring those
3 resources here. A lot of that money is directed at infrastructure. And we all know that we
4 have backlogs in infrastructure maintenance, and so, you know, I--I do believe by focusing
5 our attention on getting that money, and we will do that, that that's the place we have to
6 put our energies to meet our infrastructure requirements and not simply increase the debt
7 burden on our local citizens, so thank you for being able to make that statement.

8
9 COUNCIL PRESIDENT ANDREWS:

10 You're welcome. Thank you. Councilmember Ervin.

11
12 COUNCILMEMBER ERVIN:

13 Thank you very much. I--I agree with the chair of the MFP committee that we had a very
14 good conversation in MFP yesterday regarding this issue. I actually took the minority
15 position on the committee based on the information that we received from council staff. I
16 do--I do want to talk quickly about how the questions that were asked of me to Ms. Barrett
17 and her team regarding the debt obligation, and the responses that we received were that
18 under Glenn Orlin's recommendation, we were within those guidelines. And my biggest
19 concern at the end of the day is when it comes time to do reconciliation, are we going to
20 have enough room to do what we need to do on this side of the street, and also, how will
21 this recommendation impact county projects, and so I think that there's room for us and I
22 think we need it. And so I--I took the minority position in committee and I would like at this
23 time to move that we-- my recommendation is that we-- we go back to the \$300 million.
24 Let me put my glasses on so I can see it. To raise the FY09 and FY10 G.O. bond
25 guidelines by \$30 million. 10% each to \$330 million, which is recommendation of staff.
26 And so I want to offer that as an amendment.

27
28 COUNCILMEMBER LEVENTHAL:

29 Second.

30
31 GLENN ORLIN:

32 Can I--can I ask a clarification? There's actually 3 guidelines that you actually vote on--the
33 FY09, the FY10, and the 6-year total.

34
35 COUNCILMEMBER ERVIN:

36 Yes.

37
38 GLENN ORLIN:

39 So the 6-year total will be \$1.86 billion if you go consistent with your motion, assuming
40 that you're leaving the other years at \$300 million.

41
42 COUNCILMEMBER ERVIN:

43 Absolutely.



February 3, 2009

1
2 GLENN ORLIN:

3 So if you'd add that to your motion...

4
5 COUNCILMEMBER ERVIN:

6 That is my motion. Thank you for that correction.

7
8 COUNCIL PRESIDENT ANDREWS:

9 OK, it's been moved by Councilmember Ervin and second by Councilmember Leventhal.

10 OK, Councilmember Knapp.

11
12 COUNCILMEMBER KNAPP:

13 I'll be real quick because I know Mr. Leventhal has to leave. With the property reuse--
14 reuse plan, how much short-term debt are you expecting to issue this year if that plan
15 were to move forward?

16
17 JENNIFER BARRETT:

18 On the short-term side in the G.O. commercial--commercial paper area. I'm sorry--I'm
19 trying to bring a number out of my head. Picturing--I know that the main issue was
20 the...there's the liquor revenue bonds. Thank you, Linda. Didn't know Linda was in the
21 room. I'm sorry. It was actually very small in FY10. It doesn't--it's not actually on this page.
22 It's in my backup. But it only incurred--it incurred \$937,000, just under \$950,000 of
23 carrying cost.

24
25 COUNCILMEMBER KNAPP:

26 Right. How much debt will be issued.

27
28 JENNIFER BARRETT:

29 Trying to remember. I think it was about \$42 million, but I'm not--I'm not sure.

30
31 COUNCILMEMBER KNAPP:

32 OK. No, I--I guess--the sentence that you put in in the executives' memo, I think, which is
33 exactly right, is in the third paragraph. It says, "We require every bit of flexibility possible to
34 meet our fiscal challenges." We've got a plan that you've put on the table as it relates to
35 the property reuse study, to issue a lot of short-term debt, which is something new that we
36 have not yet done before in this sense. We don't know how that'll play out. We don't know
37 what will come down as it relates to the fiscal stimulus package, and what we're voting on
38 today is spending affordability. It doesn't say we're passing a budget and that we're gonna
39 spend 330. It says let's get ourselves maximum flexibility to look at all of the pieces that
40 we're gonna have in front of us in the next 3 months. And I think that Ms. Ervin's approach
41 actually gets us the ability to do that in a way that we can't if we limit ourselves right now
42 to what we approved in last year's budget. And so I would endorse the recommendation
43 by Councilmember Ervin. I think we need to do that to give ourselves maximum flexibility,



February 3, 2009

1 recognizing all the fiscal challenges that we're gonna have. I'm not encouraging that we
2 get to that point. We just have a lot of moving parts in front of us, and I'm not sure which is
3 the best way to proceed.

4
5 COUNCIL PRESIDENT ANDREWS:

6 Thank you. Council Vice President Berliner.

7
8 COUNCIL VICE PRESIDENT BERLINER:

9 You know, we just had a hearing earlier today in which we had one recommendation from
10 our planning board and another recommendation from our hearing examiner, in which
11 we're trying to sort through this. This is not fun when we get good recommendations from
12 our county executive and a totally different recommendation from our staff. One
13 recommendation from our esteemed chair of the MFP committee and a different
14 recommendation from staff. I would appreciate if Dr. Orlin would take a moment to
15 respond to the criticisms of this-- of the proposal by Councilmember Ervin and yourself
16 with respect to whether this is irresponsible, this--I confess I--I am having a little trouble
17 with the, quote, message aspect of this. I--insofar as I perceive that the distinction
18 between our operating budget and our capital budget is so important to keep in mind that
19 the one--I don't get how it bleeds into the other with respect to the conversations we're
20 having with our employees or other folks. So I need to understand from Dr. Orlin, your
21 rationale with respect to this and your rebuttal with respect to Mr. Firestine's and the
22 county executive's critique of this proposal.

23
24 GLENN ORLIN:

25 Thank you. First of all, I have to say the reason why you get paid the big bucks is to make
26 these kinds of decisions...

27
28 COUNCIL VICE PRESIDENT BERLINER:

29 I--I understand.

30
31 GLENN ORLIN:

32 between opposing advice. I'm sure you'll do a great job with that either way you go. The--
33 first of all, everything you heard about the economic indicators just now and that you
34 always heard of the economic indicators is terribly important as you're trying to figure out
35 the size of the pie for the operating budget. It's talking about short-term trends. It's talking
36 about what you need to look at in the very-- in the next year, year and a half, two years,
37 perhaps even. For this exercise, for debt for the G.O. bonds, you're really looking at
38 structural changes to the economy. If you believe that there will be a structural change to
39 the way this economy is in Montgomery County to the negative, then in fact you should be
40 lower--not just keeping the debt at \$300 million, perhaps you should think of lowering it.
41 However, one of the reasons why we do spending affordability for the capital budget the
42 way we do, which is that we look at these indicators not just for next year but for each of
43 the 6 years, and at the same time, we're looking at the trend of those numbers. Are they



February 3, 2009

1 going up as you approach the end of 6 years or going down or staying stable?
2 Recognizes the fact that this is a long-term issue, not a short-term issue. That's the first
3 point. The second point is that the starting and ending of this discussion really ought to be
4 about what is affordable, not what the need is, not about messages, but about what is-- is
5 objectively affordable. And the process we have, the CIP, defines that. And I'm sorry.
6 We're gonna have to look at numbers. Go to circle 7 and circle 8. These are the 2 key
7 charts. On circle 7, you'll see the debt capacity analysis for \$300 million a year. On circle
8 8, you'll see the debt capacity analysis for 330 for the first 2 years and 300 for the next 4
9 years, which are the 2 that are on the table. You can ignore circle 9 because no one's
10 proposing that. And I need to spend about 3 minutes walking you through these numbers.
11 There are 5 indicators that we always look at. If you look at circle 7--hold Circle 7 and 8 in
12 your hand. Circle 7, on line 2, we have the "Total Debt to Assessed Value," and see the
13 guideline there is 1.5%. We try to have it so that debt in any year does not exceed 1.5% of
14 the total assessed value of the County. You see under the Executive recommendation,
15 which is the current levels, the guideline is 1.5%. In FY09, it's 1.25%, and it rises to the
16 point where it's almost breaking the guideline in FY14 at 1.49, and it looks like the trend is
17 going to go above that in FY15 slightly. If you go to Circle 8, look at that same line, you
18 see that, in fact, those numbers are following the same pattern, and it does by FY14
19 exceed the 1.5% by 1/100th of a percent. And you have to ask yourself, is there a
20 measurable difference between the two of them? One is exceeding it in the last year, and
21 one is not. That's very close. Line 3. "Debt Service Plus Long-term and Short-term Leases
22 as a Percentage of Revenues." We try and make sure that ratio is not more than 10%.
23 Both scenarios-- the Circle 7 and Circle 8--are well below the 10%, so we're fine there.
24 Line 5, "Real Debt Per Capita"-- the guideline we've been using is \$1,800 per capita. We
25 both fail miserably on this one. The Executive's number rises to \$2,507 per capita. The
26 scenario I'm recommending goes to \$2,527 per capita, well in excess of 1,800, but the
27 difference between the two is not particularly significant. The fourth one is "The Debt Per
28 Income." Try to stay at 3.5% or better.

29
30 COUNCIL VICE PRESIDENT BERLINER:

31 Where is that, Dr. Orlin?

32
33 GLENN ORLIN:

34 This is line 6. Sorry.

35
36 COUNCIL VICE PRESIDENT BERLINER:

37 On 6?

38
39 GLENN ORLIN:

40 Circle 7 and 8. I'm flipping back and forth.

41
42 COUNCIL VICE PRESIDENT BERLINER:

43 Thank you. If you could let us know when you flip back and forth.



February 3, 2009

GLENN ORLIN:

Oh, sorry. On Circle 7, line 6, we're starting at what should be 3.5% or better. We're a little better than 3% in '09, and it rises to 3.49 actually in Fiscal Year '12 and then gets a little bit better as you get to Fiscal Year 14. Because, yes, although debt's increasing every year, so is income. Income's not increasing as fast as it has because of what's going on in the economy, but it's still increasing. And all these debt figures have to be thought of in context, in context of assessable base, income, population. Final one is the-- Circle 8 for "Debt Per Capita Income." We do rise above 3.5. We're at 3.52 in FY12, but then it drops back to below 3.5 by Fiscal Year 14. And finally, "The Payout Ratio," which is how much of the existing debt service that's out there is being paid back in the next 10 years should be between 60% and 75%, and both scenarios fall safely within that range. So you have to ask yourself first, and what I ask myself in each of these cases, how different are they, and how affordable are these scenarios? We didn't look at Circle 9, but if you did the same things in Circle 9, you'd see the trends are higher and trending higher much faster, so in my analysis, I discarded that pretty quickly. That's where I started, and that's where I came up with the recommendation of 330, 330, and then 300s. At the same time, I was looking at these other issues of what's happening with the Recordation Tax and the Transportation Impact Tax and the School Impact Tax, and those are basically a \$42 million shortfall, which we don't have the money for. And I need to shut up soon, because you're all going to leave. So that's where I came up with the recommendation. Sorry. Thank you.

COUNCIL VICE PRESIDENT BERLINER:

Dr. Orlin--I apologize to my colleague Councilmember Leventhal, but I do need to ask another question here. In our conversations, there's been a discussion with respect to shortfall, which I believe was part of your motivation with respect to your proposal as well as "a fiscal stimulus portion." My understanding from our conversation was that a 320 figure would address the "shortfall issue" and allow us to address all the projects that we believe we ought to address on behalf of our community. A 10 million on top of that was, if you will, your contribution to a fiscal stimulus program. Is that a fair characterization...

GLENN ORLIN:

The only thing I'd change is in the second part of it. The 20 million--yes, the shortfall. The extra 10 million is for other things in the CIP. I suggested that one of the things you might consider as you go through the CIP is this kind of a fiscal stimulus. You don't have to go there at all. You can do something else with it. You can not spend it at all. It can go right to the reserve. But I was just planting a seed, frankly, taking the opportunity to say that that might be something you might look at if, indeed, you go to 330. But the more important thing in terms of covering shortfall is that--is to go to 320. Otherwise, we're looking at cutting projects or delaying projects.

COUNCIL VICE PRESIDENT BERLINER:



February 3, 2009

1 I would just pose to my colleagues whether or not we want to consider some compromise
2 here that would allows us more flexibility to go to the 320 number that would address all
3 the shortfall issues and allow us to address the projects that we require that we want to go
4 forward with as a compromise with the County Executive that would allow us to--I take it
5 you wouldn't consider this a compromise--

6
7 TIM FIRESTINE:

8 No. I want to be clear. The County Executive's position is--and we don't believe that
9 there's a need in terms of a flexibility perspective to exceed the current limit. If we have to
10 make further adjustments to the CIP to stay within that limit, then that's what we need to
11 do. But there isn't a compromise that goes above the current limit. I also want to caution
12 you--you know, as the person who created this, be careful. I mean, it's just one tool.
13 There's a certain practicality of the tool, though, that you've got to step back from. And
14 what we're saying is let's look at the next 3 years. The next 3 years, there are actual costs
15 that you're going to put into the operating budget if you make a decision to go above the
16 \$300 million level. \$300 million level is still a significant level in this climate for us to be
17 dealing with, and we show you what the impact of that is for the next two budgets. So, the
18 cautionary note is, you're going to be looking for every dollar in that FY10 budget, and
19 anything that you add here is another dollar you're going to have to cut out of a program in
20 the county government. And I can't tell you how hard that's going to be.

21
22 GLENN ORLIN:

23 And the thing you have to ask yourself is, is it worth \$6 million more in years starting at
24 Fiscal Year '11 in that kind of debt--burden of gap for \$60 million worth of capital
25 payments next year.

26
27 TIM FIRESTINE:

28 Can I tell you-- you know, in negotiations, we're fighting with the police union over the cost
29 of their contract. The COLA in their contract is, what, \$4 million? So, you know, it's a
30 significant amount. It's something we are fighting hard in a contract to reduce, and we're
31 just saying throw out another \$6 million.

32
33 GLENN ORLIN:

34 OK, fire stations, police stations--

35
36 COUNCIL PRESIDENT ANDREWS:

37 Councilmember...

38
39 TIM FIRESTINE:

40 They're already in the CIP.

41
42 COUNCIL PRESIDENT ANDREWS:

43 Councilmember Elrich. Councilmember Elrich.



February 3, 2009

COUNCILMEMBER ELRICH:

Ah... I guess I'm still not--I'm not clear about a couple of things. What do I get for the \$20 million that I'm not getting right now? Are there targeted things that aren't in the CIP that I get?

GLENN ORLIN:

Based on the committee's recommendation, my recommendation, that we're going to actually recognize less revenue in Schools and Transportation Back Tax, essentially brings you back to even. Brings it back to what the Executive recommended in January. His recommendations did not reflect \$42 million worth of shortfall in FY--by our estimate--in FY09 and in '10. 24 million in FY09, 18 million in FY10. And the only way it can be managed is by slowing down projects or deleting projects or--

TIM FIRESTINE:

I think we need to address that. Jennifer's here. We are currently not advanced on Impact Taxes. We understand there are shortfalls in these revenues. We did not propose modifications. This is the biennial year. We're going to manage through it. The appropriations for those projects are there. We're going to monitor it. If we have to make adjustments, we'll come back to you. But at this point in time, we understand the potential for these shortfalls, but we're not making a recommendation to issue more debt to cover these shortfalls.

COUNCILMEMBER ELRICH:

And Glenn, you're asserting that if I don't do this, then capital projects that we've already said we want to do this year won't get done.

Tim Firestine:

That's not true.

COUNCILMEMBER ELRICH:

That's what he's saying.

TIM FIRESTINE:

Yes, I am asserting that.

COUNCILMEMBER ELRICH:

And you're saying that the capital projects--

TIM FIRESTINE:

Because--

GLENN ORLIN:



February 3, 2009

1 If you appropriate those projects, those projects--

2
3 JENNIFER BARRETT:

4 We've been in this situation in the past. We have a lot of flexibility in our financial area in
5 the CIP. I guess the struggles--what Dr. Orlin's introducing is a midyear CIP, where you
6 recognize every little revenue source. We can look at all the other revenue sources, too,
7 and redo the CIP every year, but years ago a choice was made to do a biennial CIP.

8 We're just arguing for that opportunity to manage through to the next time we have the full
9 CIP before you and not send the signal that if you have a loss in revenues, you issue
10 more debt. That's the wrong signal to be sending right now in this environment.

11
12 GLENN ORLIN:

13 And we've been doing this every year.

14
15 COUNCILMEMBER ELRICH:

16 Why is the debt going to cost me 10 million? Last year when we talked about this, I
17 thought the running assumption was 10% of whatever...

18
19 JENNIFER BARRETT:

20 It is. It's 3 million--the 30 million plus--

21
22 COUNCILMEMBER ELRICH:

23 So, 3 plus 3 is--

24
25 JENNIFER BARRETT:

26 in FY09 will cost you 3 million in '10 and 3 million in '11. That's 6.

27
28 COUNCILMEMBER ELRICH:

29 That's 6.

30
31 JENNIFER BARRETT:

32 And then, the next 30 will be another 3 million. So if you get to 9-- it's 9.5 when I calculate,
33 because it's a little more than 10%.

34
35 COUNCILMEMBER ELRICH:

36 But am I going to pay the 3 in '09, or am I going to pay the 3 in '10 effectively? In other
37 words, you're not going to issue the debt. We're not going to start doing stuff until
38 sometime in the year, so will that really have an impact? Will that interest payment have
39 an impact on this year or on next year? Is it really 6 million next year and then 3 million
40 carried over--

41
42 TIM FIRESTINE:



February 3, 2009

1 Well, as I said, though, you already have to find 50 million over the next 2 years to cover
2 the existing \$50 million increases in your debt service over the next 2 years to cover the
3 300 million for each of those years. You're going to add 10 to that. So it would be \$60
4 million.

5
6 COUNCILMEMBER ELRICH:

7 Um... I'm, uh...I guess I'm not comfortable. The thing that worries me is--the other
8 negotiation that's concerned me is when one of the unions talked about adding to the
9 base, protecting their base for this year, the budget implication is what it did to the base
10 for next year. And I would find it--I don't know how we're going to say you can't do that and
11 that we can't sustain that in a year that might be worse than this year and then say it's OK
12 to incur this \$3 million and this \$6 million. I guess I'm struggling with how to... how to do
13 this in a way that doesn't--I do think you have to think about the signals that you send and
14 how everything else is going to fit together. Um...how soon--would you know between now
15 and these next couple of months whether, in fact, your prediction that you can build
16 everything that you said you were going to build for \$300 million--which I thought was my
17 assumption last year when I said I want these things built for \$300 million. I didn't think
18 that was going to mean that I needed to spend 320 to build what I thought I was going to
19 get for 300, but I guess that's really the loss of the other revenues. Can you give us any
20 assurances that you can actually manage this, show us how the numbers would work, or
21 what rabbits you would pull out of the hat to make sure that all this stuff got built when you
22 said it was going to get built? That's the key piece to me. I don't want to delay another
23 school. I don't want some of these big projects falling out and us being faced with, you
24 know, I think really an unpleasant decision to make that cut. So if you can show me how
25 you're going to manage this, I would care less about the extra 20.

26
27 TIM FIRESTINE:

28 I think the care you gotta take here, it's the appropriation that drives what gets done. And
29 unless you adjust the appropriation, we're going to fund the appropriation.

30
31 COUNCILMEMBER ELRICH:

32 But you're--but--

33
34 TIM FIRESTINE:

35 That's how the CIP works.

36
37 COUNCILMEMBER ELRICH:

38 If you have less other revenues to work with--if I make this appropriation--

39
40 TIM FIRESTINE:

41 Do a cash advance. You know, we'll make a cash advance to cover it. And as Jennifer
42 said, that's why the CIP is biennial. We come back to you, then, next year with the



February 3, 2009

1 adjustments that we would have to make, you know, to accommodate the fact that those
2 revenues have come up short.

3
4 COUNCILMEMBER ELRICH:

5 And say during the course of the year you were to tell us the news that we were--that you,
6 in fact, weren't going to be able to cover the programs or the projects that we had said.
7 The Council's recourse, say, in September of next year were we to get news like that
8 would be to decide we want to issue more bonds and go ahead and do it anyway? In
9 other words, do what we're being asked to do today?

10
11 JENNIFER BARRETT:

12 Once a project is appropriated, it's my responsibility as the Director of Finance to fund the
13 appropriations and fund the projects. We're getting so into details of some complex
14 systems behind the scenes. You appropriate these projects. You authorize--I probably
15 have \$6 million, \$7 million, maybe \$9 million in authorization for outstanding G.O. bonds
16 right now that I can issue, but I don't issue it until it's needed. We spend commercial
17 paper. When it's spent, I take it out with G.O. bonds. When there's other revenue sources,
18 we advance sometimes. We work with OMB to change the funding to make it happen, but
19 we fund your appropriations. It's the appropriation action that's most important, and then
20 it's this annual spending affordability process where you're looking at your long-term
21 trends and what you should be issuing and planning to issue. It's planned issues of the
22 next 6 years, not exactly what we will issue. But it's the signal right now in these economic
23 times that I wish we were focusing on. It's the signal that we have a shortfall in revenue,
24 so let's issue more debt because some detailed numbers on a spreadsheet tell us we can.
25 It's the wrong signal to be sending in these economic times. That's my main argument, my
26 main concern.

27
28 COUNCILMEMBER ELRICH:

29 Well, I raised questions about how we were changing our spending affordability guidelines
30 last week because I thought that we were finding an artful way to do something.

31
32 JENNIFER BARRETT:

33 We're trying.

34
35 COUNCILMEMBER ELRICH:

36 Well, I'm just not always sure that "artful" is good. But I guess my question is--I'm sorry
37 we're delving into the arcane details of this, but from my perspective, it's not just things on
38 the sheet, but it's the delivery of things we told people we were going to build. So I really--
39 what's on the sheet doesn't matter as much to me as knowing that what was said was
40 going to get done was--

41
42 JENNIFER BARRETT:



February 3, 2009

1 We have never held up an Impact Tax funded project because of lack of Impact Tax
2 funds.

3
4 TIM FIRESTINE:

5 Once you appropriate it in CIP, we have to proceed. The contract's on that project. You
6 know, you can't stop a building halfway. It will get built. And as I said, I'm not saying we
7 would never make an adjustment. The adjustment comes in the next full CIP. We will
8 come back and--because of new numbers on Impact Taxes, we will have to reconfigure
9 projects. And that's the point in time where you make the reconciliation.

10
11 COUNCILMEMBER ELRICH:

12 Glenn, do you have any evidence this is not the case?

13
14 GLENN ORLIN:

15 I want to respond to your earlier point about the signal it sends to employees and to others
16 about next year's budget. The Executive has recommended and everyone has agreed that
17 the PAYGO, \$30 million in cash for next year's budget, should be gone, and they've
18 promptly made adjustments to that. They've managed that by deleting and delaying
19 projects, OK? They've cut, also, about \$5 million or \$6 million so far in current revenue,
20 cash, in the CIP. And I guess that's not going to be the end of it. There will be more
21 coming in March. That's cash next year for the CIP gone. We're positing that there's going
22 to be an \$18 million shortfall in these revenues gone. Adding back \$12 million or actually
23 none in FY10, probably \$12 million in FY12--11 for additional debt service, as you can
24 recognize, is not nearly as much as the amounts we're reducing from these other areas.
25 So if the message that you're worried about is how can we tell employees and everybody
26 else who is looking for things in the operating budget that, gee, we're just borrowing more
27 money for the capital budget, we're still cutting the capital budget resources in that
28 respect.

29
30 JACQUELINE CARTER:

31 Just to mention, Glenn, when we took the PAYGO out of the CIP, we did not delay
32 projects. We adjusted some projects where there were schedule changes so we could
33 accommodate that, but we didn't impose delays on any projects to take--

34
35 JENNIFER BARRETT:

36 Natural delays, I believe was the terminology that--

37
38 COUNCILMEMBER ELRICH:

39 I got to say that I'm real concerned about--

40
41 JENNIFER BARRETT:

42 It just fell behind schedule.



February 3, 2009

1 COUNCILMEMBER ELRICH:

2 Everybody's made it seem like next year is going to be worse than this year. I mean, not
3 just here but this is what I--you know, you cannot turn on the news and not get the sense
4 that we haven't seen the bottom yet. And the bottom is going to have implications for
5 capital gains just like what's happened so far. What happened up to December 31st had
6 implications to the capital gains we're expecting this year, so I'm not expecting next year
7 to be any easier. And so I'm struggling whether I want to make next year any harder by
8 adding any additional debt to it. And I guess at this moment, I would probably stay at the
9 300 on the assurance that that which we said we wanted to see built was going to get
10 built. But I think that's critical. I mean, we cannot deal with more delays in the school
11 modernization programs. We're already suffering with the high schools we put off last
12 year.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Are you--your mike's still on. OK. Thank you. Councilmember Floreen.

16
17 COUNCILMEMBER FLOREEN:

18 Thank you. I keep turning my light on and off as I listen to this conversation. Now, we
19 have--every year, we have this argument.

20
21 COUNCILMEMBER TRACHTENBERG:

22 Yes, we do.

23
24 COUNCILMEMBER FLOREEN:

25 Well, I've been doing it for 6 years. Well, actually it's no different, if I might say, than we've
26 had in previous years. And this is a purely academic conversation at this moment, I will
27 point out, because we don't have a budget. And what will the tradeoffs be? Well, we're not
28 in a position to evaluate that at this point in time, but I will note, attached to our packet, is
29 the notion that we really only do capital budget every 2 years is nonsense. We do capital
30 budget every year in the course of the year. We've already approved-- I'm sorry to
31 interrupt, but I would like to kind of talk with you. We've already approved 47 million in
32 adjustments, supplementals to the County CIP this year that I have never heard a whisper
33 of complaint about from the other side of the street. And why is that? Because we're
34 working together to try to solve problems collaboratively. Not picking any fights, but the
35 fact is that this is a very academic exercise. Issues come along, and we need to address
36 them. And if I turn the page, I'm looking at, Lord knows, \$100-and-some million in
37 supplemental appropriations that are pending for the capital budget. I don't know what
38 we're going to do with all that, but I know that we're going to worry about what we can
39 afford. And will we be able to fund this? I don't know. And will it all be kept G.O. bond
40 expenditures? We're not in a position to address it. But I do think this is an issue simply of
41 allowing the playing field to advance. We're not--this is a conversation we're going to have
42 in May about what works, what we should expend, what the capital implications are of
43 certain decisions that we're going to make, along with the result of negotiations that are



February 3, 2009

1 ongoing and at some point we hope will conclude. But we don't know the answer to a
2 single question at this point, except that we have some academic issues with respect to
3 what we can afford. Mr. Orlin thinks we can afford it, and I do appreciate his judgment on
4 that, but I do think the real signal to everyone is what the budget will be that's proposed by
5 the County Executive. We'll hear about that next month, and that's when we'll really get
6 into priorities and messages and how we sort this all out. But I think it's important to
7 understand that this is an evolutionary process. We have this conversation every single
8 year at this time on these points. And everything--I bet you everything's going to change
9 before we come to resolution of it. So there's no one put-and-take at this point that's going
10 to resolve these issues. But if the issue from the County Executive's perspective is
11 flexibility, this is the opportunity for that, I think.

12
13 COUNCIL PRESIDENT ANDREWS:

14 Thank you. Councilmember Knapp.

15
16 COUNCILMEMBER KNAPP:

17 Well, I appreciate the comments of my colleagues, and I appreciate Mr. Elrich's in
18 particular. This is the time we want to be able to make sure we have the opportunity to
19 discuss this. We're not looking at projects specifically today. We don't know what we've
20 got in front of us. We're trying to make sure we have affordability. As the Executive Branch
21 has indicated, they have a \$42 million proposal to issue short-term debt. Does that go
22 forward? Does that factor into this? It's something that needs to be taken into account.
23 We're looking at \$30 million here. We're looking at federal stimulus. We're looking at a
24 variety of things, and I don't think this is sending any message, quite honestly. I'm not sure
25 if people are even paying attention to our conversation about the capital budget's
26 spending affordability. At least they haven't in the 6 years I've been here before. So it
27 would be unusual if this would be the one time that they were. But I think that, yes, when
28 we get to our budget in May, when we actually determine what it is, all the various puts
29 and takes, that's when we have the details of this conversation. And so I appreciate what
30 Ms. Barrett has indicated that we're down in the weeds, but we're there because of some
31 of the points that have been raised by the executive branch. And I think what we need to
32 do right now is to make sure we have the flexibility to look at all of these pieces and begin
33 to address the concerns of what projects stay on track, what hard decisions we need to
34 make as it relates to projects that may not stay on track because we don't have the
35 resources to get there. But to try and take this piece and say, "This is the message." How
36 do we know? I mean, how much money is pending for federal stimulus money? We don't
37 know. What will we see? We don't know. Where do we go with the property reuse study?
38 We don't know. What are we going to see for school construction money? We don't know.
39 What do we really have as it relates to capital gains and how that's going to impact
40 property budgets? We don't know. And so I think what has been proposed by staff is an
41 opportunity to make sure that we have all of the pieces in play so that we can make the
42 best decisions possible when we actually get to making our final budget decisions at the
43 end of May.



February 3, 2009

COUNCIL PRESIDENT ANDREWS:

Thank you. Councilmember Ervin.

COUNCILMEMBER ERVIN:

Yes, I really appreciate the comments from Councilmember Knapp and Councilmember Floreen. This is really about flexibility, our ability to have flexibility. And I think that Glenn's proposal does just that, but I want to go back to the issue regarding the unions and their bargaining that's going on right now. And I would posit to you that in my conversations with unions, they are just as concerned about our ability to do what we need to do vis-a-vis the capital budget just as well as they are with their own desire to come to a resolution embarking on the operating side. So, I don't think you can separate out the two. If there were representatives from MCGEO sitting in the room right now, I'm sure someone would send me a note and say, "Yeah, you know, we're really concerned about some of the big capital projects that are important to our members. We'd like to be able to have some flexibility in that budget to make sure those things move forward." So I am where I started, and I see that there's still one more light on. OK.

COUNCIL PRESIDENT ANDREWS:

There is, and that would be-- thank you--Councilmember Trachtenberg.

COUNCILMEMBER TRACHTENBERG:

President Andrews, well, I knew we would definitely have a very comprehensive conversation, and I just want to close down the remarks session by just speaking to the fact that I believe sending the signal that we are spending more money in the climate that we're in is not the right thing to be doing. And I understand that we want to have flexibility, a safety net of sorts, but I actually, again, don't think we have the luxury of that, given where we are fiscally. And it would seem to me that we await anxiously some support from the federal government. They're in a position where they can spend money because they print it and we don't.

COUNCIL PRESIDENT ANDREWS:

Thank you, and I'll just add my comment. I did come into the MFP meeting yesterday really, um... open-minded about the proposal, because I hadn't served on MFP for a little while--

COUNCILMEMBER TRACHTENBERG:

7 months!

COUNCIL PRESIDENT ANDREWS:

And so I hadn't thought about it for 6 months. But I came back into it. And the conclusion-- the reason I came down on the side I did is, I think things have fundamentally changed. And I do think that we're going to have fundamentally lower budget increases for the



February 3, 2009

1 foreseeable future in County government. And I think it's going to be hard to get used to,
2 but I think that's the reality that we're going to not see the ability to sustain the level of
3 increases that we've had in recent years and that this is part of it, and that we're going to
4 see smaller increases in the operating and capital budgets because of a more constrained
5 revenue picture. And I don't see that--I see it getting worse for the next year or two, not
6 better. And I don't see increased taxes as an option in the next few years. So, I think we
7 have to get used to living with less in terms of our ability to do projects and to provide
8 increases in programs that we've had in the past. I think that's the reality, and it's a tough
9 reality, but I think that is the fundamental one. And we need to apply that principle, which I
10 think is borne out of what we're seeing all around us to both the capital budget and the
11 operating budget. And that's why I voted to stay at the current level. And we have one
12 more comment-- that's Councilmember Elrich--and then we'll vote.

13
14 COUNCILMEMBER ELRICH:

15 Is the harm done today, or is the harm done when we actually make a decision on the
16 capital budget? I mean, can we do this today for flexibility, and then if you come and make
17 the case that you can fund all this stuff and we don't need the 20 for extra things, which is
18 my concern, that we can then stay with the 300, because you can demonstrate that we
19 can manage this within the 300?

20
21 TIM FIRESTINE:

22 Yeah. My perspective, and I'm trying to make this clear. I think you should live within 300.
23 That's the Executive's position. We don't see a scenario where you go above the 300. And
24 the fundamental problem is how much it adds to the operating budget. We are--we are
25 going through budget reviews now, and it is extremely painful. I mean, we talked about the
26 public safety cuts. We're looking at \$12 million, which is a 5% reduction in the police
27 budget. \$12 million. 3 million bucks buys you a lot of police officers. And you're talking
28 about flexibility. This is about affordability. And what we're saying is, you can't afford it
29 right now. You got to live within your means.

30
31 COUNCIL PRESIDENT ANDREWS:

32 OK.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 Could I ask for clarification? With the greatest respect, Mr. Firestine, I don't think you
36 answered Mr. Elrich's question. I appreciate your philosophical point of view, but I would
37 be grateful if you would answer his question. His question was if we increase the amount
38 to 330, despite your recommendation, for purposes of spending affordability, and you
39 come back and show us that we don't need to get to 330, that we can use for the CIP 300,
40 which is within our prerogative--this is establishing a ceiling, not our obligation. So, the
41 fundamental question that I believe he was asking is that this does not predetermine that
42 we spend the 330. This allows you to come back and show us, at a future point in time,
43 that in fact Dr. Orlin is wrong, that we don't have this big gap, that Ms. Barrett is fully



February 3, 2009

1 capable of funding all the projects that we care about, that nothing is going to slip that is
2 important to us. So, that is what I believe the question was. So, I get your philosophical
3 opposition. That was not the question.
4

5 TIM FIRESTINE:

6 Well, I don't think this process was set up to provide flexibility. I think spending affordability
7 was put in to give your early messages on the budget. And the first message you're going
8 to give out of the box is that you're going to give yourself enough room to increase the
9 debt limit. That's the fundamental problem here. Sure, you can make a different decision
10 later on, but it's the message coming out of the box. This is an affordability process. We're
11 saying we don't believe you can afford to go above--it's tough to afford the 300 million,
12 much less go above it. That's what we're concerned about. It's that message. This is
13 about affordability, not flexibility.
14

15 COUNCIL PRESIDENT ANDREWS:

16 Councilmember Elrich.
17

18 COUNCILMEMBER ELRICH:

19 I'm frustrated, because I argued last week against what we did on the operating budget for
20 the very reason that we were sending a message that we could spend a gazillion dollars
21 that we had no intention of spending, and that was OK with everybody. And now a week
22 later, if I want to go over by 20 million or 30 million, that's not OK. And I guess, I'm a little
23 uncomfortable. But I would move a substitute, which is we do the 320, because if we need
24 20 million in flexibility to deal with this, then I'd rather do the 320 and bag the 10 and then
25 have the freedom to go back to 300. And I promise you, if you show me how you will
26 manage this at 300, I will be back at 300 when it comes to doing the actual budget. But I
27 think there's some merit in having some flexibility.
28

29 COUNCILMEMBER ERVIN:

30 Well, I'll accept that as a friendly--
31

32 COUNCIL PRESIDENT ANDREWS:

33 OK, so that's moved by Councilmember Elrich to set it at 320 for the next 2 years and 300
34 for the remaining 4, I take it? And it's seconded by Councilmember Ervin.
35

36 GLENN ORLIN:

37 Making the 6-year total...
38

39 COUNCIL PRESIDENT ANDREWS:

40 4 would be adjusted down to what that is. Any comments on that?
41

42 TIM FIRESTINE:

43 No.



February 3, 2009

JENNIFER BARRETT:

No.

TIM FIRESTINE:

No, we're done.

COUNCIL PRESIDENT ANDREWS:

All right. OK, all those in favor of that substitute motion, please raise your hand. And that is Councilmember Elrich, Councilmember Floreen, Council Vice President Berliner, Councilmember Knapp, and Councilmember Ervin. Opposed? Councilmember Trachtenberg and myself. It passes 5-2. OK. Thank you all. We'll be back at 7:30 for public hearings.

COUNCIL VICE PRESIDENT BERLINER: ?????

Oh, more fun. More fun.